

The Honorable Robert J. Bryan

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8 **UNITED STATES DISTRICT COURT**  
9 **WESTERN DISTRICT OF WASHINGTON**  
10 **AT TACOMA**

11 STATE OF WASHINGTON,

12 Plaintiff,

13 v.

14 THE GEO GROUP, INC.,

15 Defendant.

Case No.: 3:17-cv-05806-RJB

**DECLARATION OF COLIN L.  
BARNACLE**

16 I, Colin L. Barnacle, make the following statement under oath subject to the penalty of  
17 perjury pursuant to the laws of the United States and the State of Washington:

18 1. I am the attorney for The GEO Group, Inc. in the above-captioned matter. I am  
19 over the age of eighteen (18), and I am competent to testify in this matter.

20 2. Attached is a true and correct copy of the following exhibit:

21 **EXHIBIT A:** The Deposition transcript of Gregory Bingham, who was deposed by the  
22 State of Washington on May 23, 2019.

23 Dated this 20th day of November, 2019 at Denver, Colorado.

24 Akerman, LLP

25 s/ Colin L. Barnacle

26 Colin Barnacle, (Admitted *pro hac vice*)  
27 Attorney for Defendant The GEO Group, Inc.

**PROOF OF SERVICE**

I hereby certify on the 20th day of November, 2019, pursuant to Federal Rule of Civil Procedure 5(b), I electronically filed and served the foregoing **DECLARATION OF COLIN L. BARNACLE** via the Court's CM/ECF system on the following:

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s/ Nick Mangels  
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# **EXHIBIT A**

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON

STATE OF WASHINGTON )  
 )  
Plaintiff, )  
 )  
vs. ) No. 3:17-CV-05806-RJB  
 )  
THE GEO GROUP INC. )  
 )  
Defendant. )

DEPOSITION UPON ORAL EXAMINATION  
OF GREG BINGHAM

10:13 A.M.

MAY 23, 2019

800 FIFTH AVENUE

SUITE 2000

SEATTLE, WASHINGTON 98104



REPORTED BY: CATHERINE A. DECKER, CCR NO. 1975



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24 Also present: KATIE HALL, Legal Assistant

25



## I N D E X

## EXAMINATION BY: PAGE

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MR. FREE 163

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Exhibit 198 Solicitation, offer & award  
GS 040430-660 76Exhibit 199 Excel files, Final proposal  
revision, GS 229681 105Exhibit 200 PBNDS 2011  
GS 000001-03, GS 122Exhibit 201 GEO Group's responses and  
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Admissions 130Exhibit 202 Contract award to GEO, 10/24/09  
GS 00270461-0648 140Exhibit 203 Solicitation, offer and award  
GEO-State 00270649-0784 144Exhibit 204 E-mail from J. Rice to  
G. Bingham notes of conversation  
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Exhibit 205 Declaration of Tae Johnson 200



1 SEATTLE, WASHINGTON; MAY 30, 2019

2 10:13 A.M.

3 --oOo--

4

5 GREG BINGHAM,

6 sworn as a witness by the certified court reporter,

7 testified as follows:

8

9 EXAMINATION

10 BY MR. POLOZOLA:

11 Q. Good morning, Mr. Bingham. Lane Polozola here  
12 on behalf of the State. With me today to Andrea  
13 Brenneke and Katie Hall, our legal assistant.

14 MR. FREE: Mr. Bingham, I'm Andrew Free.  
15 I represent a certified class of plaintiffs in a case  
16 called Nwauzor vs. GEO. It's been consolidated with  
17 this case.

18 Q. All right. So Mr. Bingham, I know you've been  
19 deposed before. How many times have you been deposed?

20 A. I believe, like, 22.

21 Q. Okay. So I'll give you some instructions. I  
22 know you will be familiar with them, but I want to make  
23 sure we're clear. Please answer verbally yes or no,  
24 don't shake your head or say "uh-uh" or "uh-huh" for  
25 the sake of the court reporter.





1 A. Understood.

2 Q. Thank you. Please try and let me finish my  
3 questions. I will do my best to let you finish your  
4 answers before I ask any followup. If you don't  
5 understand a question, please ask me to clarify;  
6 otherwise, I'll assume you understand, if that makes  
7 sense.

8 A. Understood.

9 Q. If you don't know the answer you can say so,  
10 but if you do know the answer, you have to answer the  
11 question. Please give your attorney an opportunity to  
12 object, but you are required to answer the question  
13 unless you are instructed not to on privilege grounds.  
14 Do you understand?

15 A. Understood.

16 Q. If you need a break at any point, feel free to  
17 ask; we're happy to accommodate. I'll just ask that  
18 you answer the pending question before taking a break.

19 A. Will do.

20 Q. Okay. What did you do to prepare for this  
21 deposition?

22 A. I reviewed documents, and I reviewed some  
23 deposition transcripts and some other documents -- and  
24 I can go into more detail as you wish. And I met with  
25 counsel, with Matt.



1 Q. When did you meet with counsel?

2 A. Tuesday afternoon, evening.

3 Q. One meeting only?

4 A. Yes.

5 Q. And when you say you reviewed deposition  
6 transcripts, what transcripts did you review?

7 A. The deposition transcripts of Ryan Kimble,  
8 Bertha Henderson, Alisha Singleton, and William  
9 McHatton.

10 Q. No other deposition transcripts that you are  
11 reviewed to prepare?

12 A. No others.

13 Q. And you mentioned other documents. What other  
14 documents did you review to prepare for this  
15 deposition?

16 A. A part of a contract dated July of 2002,  
17 awarded July 2002, and it starts with GEO-State  
18 00270649, I believe.

19 Q. Can you repeat that number one more time for  
20 me? I wasn't ready for it.

21 A. Certainly. 00270649.

22 Q. And what was -- can you explain to me a bit  
23 about that contract. Who were the parties and what was  
24 it about?

25 A. It was between CSC and INS, if memory serves.



1 And it was -- it might have been the first in a series  
2 of contracts regarding the Northwest Detention Center  
3 in that it, included with the contractor, needed to be  
4 ready to perform within 240 days of contract award.  
5 And so with such a long period of time from contract  
6 award to performance, it may have been the first in a  
7 series.

8 Q. And what portion of that contract did you  
9 review?

10 A. A significant portion. It was -- there were  
11 sections referencing documents, and the documents  
12 referenced were not included in the PDF file I was  
13 looking at. It's hard for me to definitively say what  
14 was missing. It was a significant part, I believe, of  
15 that 2002 contract.

16 Q. Okay. Were there any other documents that you  
17 reviewed to prepare?

18 A. Yes. 2009 contract, and it begins with the  
19 Bates no. GEO-State 00270461.

20 Q. And what was that contract?

21 A. I think it's the one that in the deposition  
22 transcripts, and you may have come to be referring to  
23 as the 2009 contract between GEO and ICE.

24 Q. For the Northwest Detention Center?

25 A. Yes.



1 Q. Okay. Had you reviewed that contract at the  
2 time you offered your report in this case?

3 A. I had not.

4 Q. What other documents did you review to prepare  
5 for this deposition?

6 A. 2008 National Detainment Handbook, Bates  
7 starting with GEO-State 015696.

8 MR. FREE: I'm sorry. Can you repeat  
9 that?

10 THE WITNESS: The Bates number was  
11 015696.

12 Q. And what was that document?

13 A. It was a multipage, I believe developed by  
14 ICE, and it addressed various things about detention  
15 centers generally. And I would have to look at it to  
16 be more verbose.

17 Q. Okay. Any further documents that you reviewed  
18 to prepare?

19 A. Okay. So the documents -- and I'm looking at  
20 my appendix 3 to my report. So it lists some documents  
21 there. And I think I probably reviewed -- I reviewed  
22 most, maybe not all, but I reviewed most of those  
23 documents as well.

24 Q. For the documents that you reviewed that were  
25 not listed in your appendix 3, did reviewing those



1 documents cause you to modify any of your opinions as  
2 set forth in your report?

3 A. No.

4 Q. And why didn't you review those documents  
5 before you offered your report in this case?

6 MS. ARMSTRONG: Object to the form.

7 A. Well, they were not available to me is the  
8 short answer. For some reason -- well, for some of  
9 them they had not yet occurred, so several of the  
10 depositions had not yet been taken, so I could not --  
11 they just didn't exist at that time.

12 Q. And for the documents that did exist, was  
13 there a reason that they were not provided to you?

14 MS. ARMSTRONG: Object to the form.

15 A. I'm not aware, if there is reason, what the  
16 reason was.

17 Q. So turning to your appendix 3, is this list --  
18 I see that you have a copy of your report. Let's go  
19 ahead and have one marked as an exhibit so that we know  
20 what we're referring to. It's going to be Exhibit 197.

21 [Exhibit No. 197 was marked for identification.]

22 Q. So can you actually take a look at Exhibit 197  
23 that I provided to you. Once you have had a moment to  
24 review my question will be whether that's a complete  
25 copy of your report as you provided in this case.



1           A. Yes. This appears to be a full and complete  
2 copy of my report.

3           Q. Great. So turning to appendix 3 where we  
4 were, there are, as far as I can tell, ten documents  
5 listed here or ten bullet points, and number 11 refers  
6 to an interview with GEO personnel. For numbers 1  
7 through 10, is that a complete list of documents that  
8 you had reviewed in order to prepare your report in  
9 this case?

10          A. No.

11          Q. What other documents had you reviewed to  
12 prepare your report that are not listed here?

13          A. And I'll do my best to answer that, of course,  
14 as with everything today. But the -- on page 1 of my  
15 report, the second full paragraph, at the end where it  
16 says "I also considered requirements of the Federal  
17 Acquisition Regulation (FAR) and the Department of  
18 Homeland Security (DHS) Acquisition Regulation (HSAR)."  
19 So I reviewed four -- those are other documents that I  
20 reviewed. So item 4 here, the GEO FPR (final proposal  
21 revision), I don't know the Bates ranges here if they  
22 include the Excel file that was submitted, I believe by  
23 GEO, to ICE as part of their FPR, but I have reviewed  
24 that spreadsheet, the Excel workbook, which was  
25 submitted as part of the FPR.



1 Q. And what was contained in that Excel file?

2 A. A number of tabs, different sheets that can be  
3 selected and that build up the pricing by CLIN and also  
4 by different categories of cost.

5 Q. Okay. And who provided you with that Excel  
6 spreadsheet?

7 A. Counsel.

8 Q. Can you be clear on which counsel?

9 A. I believe -- I'm certain that was from  
10 Greenberg Traurig. That's T-r-a-u-r-i-g.

11 Q. So in addition to the legal authorities you  
12 mentioned, the FARs, are there any other documents that  
13 are not included in this list that you reviewed to  
14 prepare your report?

15 MS. ARMSTRONG: Object to the form.

16 A. I don't remember any others. There are -- as  
17 you know from my report, there are footnotes providing  
18 sources. And if there are any sources there that are  
19 not listed here, like the FAR and the HSAR, I didn't  
20 include here as a document relied upon, but I have them  
21 in the footnote. I'll say I generally reference  
22 various authoritative texts, and I don't remember if I  
23 did when forming my opinion because I reference them so  
24 frequently, and I can list a few of those are a book by  
25 Nash and Cibinic, that's C-i-b-i-n-i-c, and it's



1 called: Formation of Government Contracts. And I  
2 often reference the defense contract audit agencies,  
3 the DCAA's Contract Audit Manual. And going forward I  
4 will refer to that as the DCAM, DCAA Contract Audit  
5 Manual. I often refer to it for when I'm researching  
6 things. There's another book also by Nash and Cibinic,  
7 and the name is Administration of Government Contracts.  
8 And I may have referenced it.

9 Q. Okay. So number 11 refers to interview of GEO  
10 personnel. Who from GEO did you interview?

11 A. Chuck Hill. He's a director of business  
12 development for GEO western region. On the phone  
13 statement at the same time was Lewis Carillo,  
14 C-a-r-i-l-l-o, and I believe he's a VP of corp counsel.

15 Q. So he's an attorney?

16 A. I believe so.

17 Q. Did you speak with anyone else from GEO?

18 A. I don't believe so.

19 Q. When did that conversation or conversations  
20 occur?

21 A. In mid September of 2018.

22 Q. So days before your report was issued?

23 A. Yes.

24 Q. And to be clear, your report is dated  
25 September 20, 2018, so in the week or two before your





1 report was submitted?

2 A. It was within certainly within a week.

3 Q. Had your report been drafted before you spoke  
4 with those individuals from GEO?

5 MR. DONOHUE: Object to the form.

6 A. I'm sure we had at least an outline, maybe a  
7 rough draft.

8 Q. Why didn't you name the individuals from GEO  
9 in your report?

10 MR. DONOHUE: Object to the form.

11 A. No reason.

12 Q. What did you discuss with regard to -- or  
13 excuse me. What did you discuss with Mr. Hill?

14 A. Well, and one way to address that answer is  
15 for us to go -- there are four or five times in my  
16 report where I make a reference to an interview of GEO  
17 personnel. And I either put that as a source or I make  
18 reference to that for how I know something. Or often  
19 it's -- I know something from three different ways, if  
20 you will, and that's one of the ways. So we could do  
21 that now, we could do that in the course of the  
22 deposition. I'll leave that up to you.

23 Q. Okay. Is there anything you discussed with  
24 Mr. Hill that did not end up in your report aside from  
25 those four to five times you're referring to?



1           A. Well, I didn't transcribe every word that was  
2 said in the phone call, so I'm sure there was things  
3 said that I found to be not relevant that didn't make  
4 it into the report. Everything that I found to be  
5 relevant did make it into the report.

6           Q. Do you have any examples of information you  
7 found to be not relevant that you chose not to include  
8 in the report?

9           A. No, I do not.

10          Q. And so if I heard you correctly, did you  
11 transcribe notes from the call?

12          A. A colleague of mine -- there was no literal  
13 transcription of notes. There was a colleague of mine  
14 that summarized, was taking notes during the call.

15          Q. Okay. Who was that person?

16          A. That person was Jonathan Rice.

17          Q. So there was a record at least in notes form  
18 of what was discussed on that call?

19          A. Yes.

20          Q. How long did that conversation last?

21          A. The conversation I was on was less than an  
22 hour. And there may have been another conversation --  
23 I'm speculating, but there may have been another  
24 conversation between Jonathan and Mr. Hill prior to  
25 mine. I don't remember.



1 Q. Okay. Do you supervise Jonathan Rice?

2 A. I do.

3 Q. So for conversations that may or may not have  
4 occurred between Mr. Rice and, GEO, is that potentially  
5 a conversation you're relying upon in your report?

6 A. No.

7 MR. DONOHUE: Object to the form.

8 Q. So I'm trying to understand, there may or may  
9 not have been additional conversations with GEO  
10 personnel, correct?

11 A. There may have been, and it wasn't -- it would  
12 have been at my direction, but I don't remember now if  
13 I directed Jonathan to do that or not in this case.  
14 Sometimes I will, if I am not available, he has a less  
15 busy schedule than mine, I might say go ahead and reach  
16 out to them and then I'll be on a later call. I don't  
17 remember if I did that in this case or in this instance  
18 or not.

19 Q. So for the information you learned from GEO  
20 and any instances where you cite interview with GEO  
21 personnel in your report, did you independently confirm  
22 the facts you discussed with GEO?

23 MR. DONOHUE: Object to the form.

24 A. We would -- it's hard for me to answer that  
25 broadly. I mean, if we to go item by item where it's



1 referenced in my report, I could answer it better that  
2 way.

3 Q. Okay. Have you spoken with anyone from GEO  
4 since submitting your report?

5 A. I have not.

6 Q. Okay. So let's turn back to your experience a  
7 bit. Can you explain to me your educational  
8 background, please.

9 A. Certainly. I have a bachelor's of science  
10 degree in electrical engineering from the University of  
11 Kentucky and I worked a bit as an electrical engineer.  
12 And after that I went and got an MBA, master's of  
13 business administration, degree from the University of  
14 Texas in Austin. And after that I began working in the  
15 field that I work in now about 33 years ago. I have --  
16 I don't know if you want me to cover this now, but I  
17 also teach a lot in the field that we're talking about  
18 today. I'm an adjunct professor at George Washington  
19 University where I teach a course called Pricing and  
20 Cost Issues in Government Contracts. And I teach a lot  
21 of government COs, contracting officers, and CORs,  
22 contracting officer representatives, as well as company  
23 people -- people that work for contractors that do  
24 business with the federal government, agencies of the  
25 federal government.



1 Q. Okay. So to be clear. When you refer to the  
2 field that we are talking about today, what field do  
3 you understand that to be?

4 MR. DONOHUE: Object to the form.

5 A. I guess I would say procurement, especially  
6 U.S. federal government procurement processes and  
7 practices.

8 Q. So in the past 33 years have you been with the  
9 same firm the entire time or no?

10 A. I have not been with the same firm for the  
11 entire time.

12 Q. How long have you been with your current firm?

13 A. Since 2004 -- since April of 2004.

14 Q. But were you doing the same type of work  
15 before that period?

16 A. Yes, I was -- well, let me clarify. There  
17 have been changes in federal procurement over the  
18 course of that 33 years. Early in my career the U.S.  
19 government bought a lot of hardware -- Jeeps, tanks,  
20 airplanes, things like that. Today they buy a lot of  
21 services and a lot of -- just the nature -- even the  
22 hardware they buy is often, the consent is more  
23 software than it is hardware. But especially the  
24 services, like in this matter, like in the subject  
25 contract where there is a service. So there have been



1 a lot of changes in federal procurement over that time  
2 period. But I have been working in federal procurement  
3 policies and practices for that 33 years.

4 Q. Okay. How long have you served as a  
5 testifying expert for litigation purposes?

6 A. So I -- my job responsibilities involve a lot  
7 of different things in addition to that, and I guess I  
8 would say that I think I first testified in, like,  
9 1994. So I'm just checking that because it's easy to  
10 see in my listing. 1991 was the first time I  
11 testified. And at that time it was somewhat rare for  
12 me to testify. Now I testify more than once a year,  
13 multiple times a year.

14 I also provide a lot of advice to clients,  
15 consulting advice, that is not in the context of a  
16 dispute. So it's -- there is a new regulation or the  
17 company -- as an example, the company -- a regulation  
18 is applicable to the company that was not applicable to  
19 the company prior, and they want to know how to modify  
20 their operations with respect to this new clause that's  
21 been added to one of their contracts. So I provide a  
22 lot of consulting assistance of that nature.

23 Also there's sometimes whistle blowers or  
24 False Claims Act type allegations and I will  
25 investigate that sort of thing more from an accounting



1 and finance and practices in the industry, because...  
2 So I'll just say that testimony is not -- it's maybe  
3 half or less of my job responsibilities. I'm also the  
4 president of the Kenrich Group, and that takes some  
5 amount of time performing the role of president.

6 Q. How many times have you testified at trial?

7 A. Approximately 15 -- well, and I'm including  
8 trials, mediations, arbitrations. And if the number is  
9 important we should go through my list and we'll figure  
10 out how I developed it. Because some of the mediations  
11 I presented multiple times, and I count that as one for  
12 the purposes of the number that I think is 15.

13 Q. Okay. I'll take your word on 15. And I  
14 believe you said you've been deposed, was it, 22 times?

15 A. I believe that's correct.

16 Q. And how many times -- have you been retained  
17 by Greenberg prior to this case for any matter?

18 A. I may have been. I worked on a matter about  
19 ten years ago, 2008 or '09, and the attorney I was  
20 working with, he has moved firms a few times. I think  
21 he was at Greenberg Traurig at that time, but I'm not  
22 absolutely sure.

23 Q. And have you been retained by Holland and  
24 Knight ever before this case?

25 A. Yes.



1 Q. How many times?

2 A. I would say between five and ten times.

3 Q. And how far back time wise was your first  
4 retention by Holland and Knight?

5 A. Approximately ten years ago.

6 Q. Have you been -- excuse me. Have you done  
7 work for the GEO Group aside from your testimony in  
8 this case?

9 A. I have not.

10 Q. Has any of your prior experience involved  
11 issues related to state law labor standards?

12 MR. DONOHUE: Object to the form.

13 A. So state procurement regulations multiple  
14 times, I don't remember it involving -- would you  
15 restate your question.

16 MR. POLOZOLA: Would you read the  
17 question back, please.

18 [The question was read back by the reporter.]

19 A. I believe so.

20 Q. How so?

21 A. I think state law labor standards have been  
22 implicated in some of the work we have done assisting  
23 construction contractors in their reporting of  
24 information about their union and other workers to, I  
25 believe it was, the state -- I'm fairly sure it was the





1 state regulatory body. So that's how I remember right  
2 now I've encountered it. There may be more.

3 Q. But can you recall any others specifically?

4 A. And again it's the labor standards. And I'm  
5 struggling a bit because I work on procurement issues  
6 at the state level a fair amount. But the labor  
7 standards -- I can't remember other times when I've  
8 dealt with the labor standards, or interfaced the labor  
9 standards.

10 Q. So for the example you did mention the  
11 construction contractors. Did that involve an analysis  
12 of state minimum wage requirements?

13 A. It did not.

14 Q. Have you worked on any other matters involving  
15 state minimum wage requirements?

16 A. I don't remember at the time.

17 Q. Has any of your prior experience involved  
18 issues related to federal detention standards?

19 A. Somewhat, yes.

20 Q. How so?

21 A. Well, one of the matters -- and I can draw  
22 your attention to page 6 of my appendix 2. At the top  
23 of the page there is a matter listed, it starts with  
24 Medical Development International Inc., and a long list  
25 of people and companies. And this related to the



1 provision of medical services for detainees, for  
2 prisoners, at various prison facilities.

3 Q. Do you have any other experience with federal  
4 detention standards aside from that one case?

5 A. My memory is fuzzy on this, it's hard over 33  
6 years. But I think I worked on a bid protest where a  
7 company that provides -- it may be a competitor of GEO  
8 for all I know -- but provides that type of services,  
9 did not get awarded a federal contract and protested  
10 that nonaward. And I worked on that matter, I believe.  
11 My memory is fuzzy on that.

12 Q. Do you have any experience with private  
13 prisons or detention facilities, generally speaking?

14 MR. DONOHUE: Object to the form.

15 A. Could you -- by experience, could you expand  
16 on that.

17 Q. Sure. Do you have prior experience where you  
18 have contracted -- or excuse me. Do you have prior  
19 experience where you have worked as a consultant for  
20 other private detention companies or private prison  
21 companies?

22 A. Just the bid protest that my memory is  
23 somewhat fuzzy on. Just that.

24 Q. Have you worked on -- well, let me give you  
25 some preface here. Putting aside the identity of the



1 client, have you ever worked on any issues relating to  
2 private detention or private prison aside from this  
3 case?

4 A. Aside from the bid protest, I don't remember a  
5 time.

6 Q. So in the bid protest that you mentioned, what  
7 was the name of the company that you were working with?

8 A. I'm sorry. I don't remember.

9 Q. Do you recall the outcome of that?

10 A. No. And let me say, I remember discussing  
11 this matter and then -- but I don't remember if --  
12 sometimes in a bid protest the company is trying to  
13 decide whether they need a cost expert or someone that  
14 does what I do, and they will ask us to fill out a  
15 protective order application to be admitted to the  
16 case, and then they won't need us. So we review some  
17 documents and we get ramped up, but then we don't end  
18 up doing it. That may have happened, and that may be  
19 why my recollection is fuzzy on what the matter was.  
20 And it's also quite some time ago.

21 Q. Have you ever worked as an expert in a case  
22 where you were hired by a state government?

23 A. I don't believe so.

24 Q. Have you ever worked as an expert in a case  
25 where you were hired by a local government?



1 A. Yes.

2 Q. What case was that?

3 A. Well, do you mean by case, like a dispute?

4 Q. Let's start with dispute, yes.

5 A. I don't believe so.

6 Q. So is there a nondispute matter where you've  
7 consulted for a local government?

8 A. Yes.

9 Q. And what was that matter?

10 A. That was a -- it's been 20 years ago. There  
11 may be others, but this one comes to me first. It was  
12 assisting in Iowa, a local government, in developing a  
13 solicitation. It needed certain things procured, and  
14 it was developing a solicitation trying to figure out  
15 what companies might provide the service and how to  
16 structure the solicitation. And I was working on that.

17 Q. Similar set of questions. Have you ever  
18 worked in a case where you were hired by a union?

19 A. I don't believe so.

20 Q. And I said "case," so I want to be clear here.  
21 Have you ever consulted or worked on nondispute-related  
22 matters for a union?

23 A. I don't believe so.

24 Q. Have you ever worked on a case where you were  
25 hired by an employee rather than an employer?



1 MR. DONOHUE: Object to the form.

2 A. A few times, yes.

3 Q. Can you tell me what those few times are?

4 A. Well, they both related to -- they were both  
5 whistle blowers in the context of the False Claims Act.

6 Q. And so let's take them one by one, if you  
7 could just give me a little bit of detail on each.

8 A. It's been so long. They were both in the mid  
9 to late '90's and we did not have a good experience and  
10 did not work for whistle blowers, or we were very much  
11 more circumspect when working for whistle blowers after  
12 that. But we were retained by an outside law firm to  
13 get to analyze some damages issues, assuming certain  
14 facts by the whistle blower. And I believe it was the  
15 defense industry in both cases.

16 Q. Okay. And why were you circumspect after that  
17 about working with whistle blowers?

18 A. Well, maybe I'll amend my answer --  
19 circumspect about working with counsel for whistle  
20 blowers.

21 Q. Why is that?

22 A. Because of the experiences we had there.

23 Q. What about those experiences were negative, if  
24 any, that caused you to be circumspect?

25 A. If memory serves, I thought we were retained



1 and we had an agreement about what we would do and what  
2 we would be paid, and we did what we -- there was some  
3 issue where we did what we thought we had agreed to do,  
4 and we thought they had agreed as well. And then they  
5 didn't pay us.

6 Q. Have you ever been hired by a federal  
7 government agency?

8 A. Yes.

9 Q. Which agencies?

10 A. The Department of Defense.

11 THE WITNESS: Can we continue while I  
12 refill my water?

13 MR. POLOZOLA: Sure.

14 Q. [By Mr. Polozola} So you mentioned the  
15 Department of Defense. What matter did you work on for  
16 the Department of Defense?

17 A. And your initial question said retained, and I  
18 was contacted and I'll tell you more about the matter  
19 if you want to hear about it. But when I was  
20 contacted, I thought it made more sense for one of my  
21 colleagues, so I introduced my colleague; my firm was  
22 retained, I worked a few hours but my colleague did  
23 most of the work and provided the testimony.

24 Q. Okay. So putting that instance aside, have  
25 you been hired by any federal agencies?



1           A. Well, and I was hired and I did incur hours  
2 and we were paid, so I was hired there. But then there  
3 was a matter for -- I believe it was for a judicial  
4 branch, it was a judge. It was not -- you said an  
5 executive branch agency, I believe.

6           Q. I think I said a federal government agency,  
7 but I understand the distinction. So what was the  
8 matter with the judicial branch?

9           A. A judge in a mediation wanted someone to  
10 evaluate the damages claims by the different parties  
11 and advise them.

12          Q. So you served as a damages expert in that  
13 matter?

14          A. Yeah. It's not a damages expert in the  
15 traditional sense because I was just working for the  
16 judge. I mean, there were, like, damages experts  
17 reporting to the judge and the judge wanted assistance  
18 in evaluating what he was given.

19          Q. Sure. So in your practice today, do you  
20 primarily work for government contractors?

21          A. I work more for government contractors --  
22 commercial contractors, companies -- than I work for  
23 government entities.

24          Q. If you can explain the extent of that split  
25 for me, what percentage of your work is for government



1 contractors versus government agencies?

2 A. Well, there are contractors that work for the  
3 government that are effectively an arm of the  
4 government, and I'm thinking about these M&O, that's  
5 management operations contracts, for example, that the  
6 Department of Energy awards where the contractor then  
7 runs like Sandia National Lab or Los Alamos National  
8 Lab, or the Hanford site, or Oakridge Tennessee site  
9 for the federal government. So I've worked for those  
10 entities multiple times. And in your question of me  
11 for the split, where do I put those is kind of what I'm  
12 getting at.

13 Q. Yeah. So I guess let's go back to your  
14 initial answer where I believe you referred to  
15 government contractors or commercial entities versus  
16 government entities. So I'm using the split that you  
17 used in your answer, and I want to know how that shakes  
18 out numbers wise.

19 MR. DONOHUE: Object to the form.

20 A. It's much more -- it's more than 90 percent.  
21 It's 90-10 or so or higher depending on how you split  
22 these M&O contractors that are effectively the  
23 government.

24 Q. Okay. So I think you mentioned in your report  
25 that you had experience regarding improper labor





1 charging issues. Does that sound familiar?

2 A. Maybe you could direct me to that page of the  
3 report.

4 Q. I believe it's on page 2. It's about halfway  
5 down. It's in what would be item no. 7.

6 A. Yes, I see it. And I'm writing on my version,  
7 I'm not writing on your exhibit.

8 Q. Well, actually, you're free to write on this  
9 one because that one will stay with the court reporter.  
10 If you need to identify something and help show us  
11 something, please do it on this copy.

12 A. Will do.

13 Q. But back to improperly recharging as referred  
14 to here in item no. 7, can you explain to me what that  
15 experience was?

16 A. So I have quite a lot of experience in that  
17 area investigating that and educating and training  
18 contractors on how to properly charge their labor and  
19 how to properly -- assisting in the accounting  
20 operations of government contractors in properly  
21 accounting for labor costs. And so sometimes this has  
22 been in the context of an investigation where at one  
23 extreme a contractor is alleged to have -- people that  
24 the contractor alleged to have worked on one contract  
25 while they recorded their time to a different contract.



1 That's an easy example. That's an example I use in my  
2 class at George Washington University.

3 But there is often much less exciting, if you  
4 will, labor charging issues that more relate to just  
5 overtime. If someone works eleven hours in a day and  
6 they are a salaried employee, do they just say, well,  
7 I'm salaried. I just record eight hours on my time  
8 sheet. That would be -- in most instances that's  
9 improper. They should record all eleven hours. And if  
10 they -- as an example. And I could go on, but I may  
11 have answered your question.

12 Q. I think so. So when you refer to this here,  
13 it's referring to accounting matters involving labor  
14 charging issues; is that correct?

15 MR. DONOHUE: Object to the form.

16 A. It's not only accounting. I mean, it's -- if  
17 a company has 5,000 employees and all 5,000 have to  
18 fill out time sheets or record their labor in some way  
19 every day, it becomes a contract administration issue,  
20 or just a company administration issue in how do you  
21 train people to record their time properly and how do  
22 you audit and evaluate to ensure that they record their  
23 time properly. How do you test that they perform their  
24 labor charging properly.

25 Q. Has that experience involved advice as to



1 whether an entity must comply with state minimum wage  
2 laws?

3 MR. DONOHUE: Object to the form.

4 A. I don't believe so.

5 Q. Has any of the experience you were just  
6 discussing involved issues related to detainee labor  
7 practices?

8 MR. DONOHUE: Object to the form.

9 A. Well, there's a lot of overlap at least with  
10 regard to how time is recorded for detainees or  
11 employees. But most of my work, maybe all of it, has  
12 been related to employees.

13 Q. And when you say they've been related to  
14 employees, am I understanding you that it has not been  
15 related to detainees?

16 A. It's primarily, maybe exclusively been, but  
17 certainly primarily been related to employees.

18 Q. So I just want to make sure I understand. Are  
19 you distinguishing between the two as though detainees  
20 cannot be employees?

21 MR. DONOHUE: Object to the form.

22 Q. I'm just trying to understand what you're  
23 referring to here. I want to be clear.

24 A. Understood. I thought you were making that  
25 distinction in your question when you were -- I was



1 talking about employees and you asked about detainees.  
2 I am distinguishing them in my -- I was distinguishing  
3 the employee versus detainee in my answer.

4 Q. Have you -- in number 7 here, this is what I'm  
5 referring to -- "forensic investigation of accounting  
6 matters involving allegations of issues such as  
7 defective pricing, improper billings, mischarges and  
8 improper labor charging." Has any of that work  
9 involved improper labor charging at private detention  
10 facilities?

11 A. I don't believe so.

12 Q. You mentioned earlier that you had worked on  
13 certain damage-related issues. Are you offering any  
14 opinions in this case as to economic or damages-  
15 related issues?

16 A. I am not.

17 Q. So on the same topic that we were just  
18 discussing, you may have mentioned that you've  
19 consulted on what the standards are for how employers  
20 record time. So can you explain to me generally what  
21 is the industry standard for how employers are supposed  
22 to record time, if any?

23 MR. DONOHUE: Object to the form.

24 A. And this is -- what I'm addressing is how  
25 companies are to instruct their employees to record



1 time and how they do it. And I'll just say -- and some  
2 of this comes from DCAM, the audit manual. But what  
3 I'm explaining is kind of the standards and practices  
4 in the industry, and it's that employees, every  
5 employee fills out a time sheet. It can be electronic  
6 or paper, but fills out a time sheet every day, and  
7 that they record all of their time. And if they worked  
8 eleven hours, for example, and they're salaried, they  
9 don't make an assumption that they should just put down  
10 eight hours. And if they work on -- and they should be  
11 very accurate in their reporting. Some require  
12 recording time to the tenth of an hour, others do  
13 not -- but be accurate in the reporting, and to not  
14 favor one time of contract over another.

15 And an example of that would be if a person  
16 worked eleven hours in a day, and they worked three  
17 hours on a proposal, which is, say, not reimbursable,  
18 and they worked eight hours on a contract, in this  
19 example their time is reimbursable to the company. An  
20 improper billing, that some people are unaware of is  
21 improper, would say, well, I'm salaried, so I'm just  
22 going to record eight hours -- I'm salaried and I  
23 worked eight hours on this reimbursable contract, so  
24 I'm going to record all of my time to the reimbursable  
25 contract; that would be improper.



1           The proper way would be to say no, if I worked  
2 8.25 hours on the reimbursable contract, record 8.25  
3 hours to the reimbursable contract. And if I worked  
4 2.75 hours on the proposal, record 2.75 hours to that  
5 proposal. And then -- and I may have answered your  
6 question, but I have gotten work on this subject, just  
7 to be complete in the answer. So then companies should  
8 oversee their employees to make sure that they are  
9 doing that and make sure that they do record their time  
10 daily and that they are accurate in how they record it.

11           So companies can oversee that by, there are  
12 electronic timekeeping systems, and they can check to  
13 see kind of electronically through the computer did  
14 everybody report their time every day, and if they  
15 didn't, they can go to that person and educate them on  
16 the property timekeeping practices. If someone puts in  
17 their time and then in a day, say on Monday, and then  
18 they come in Wednesday and they edit their time to  
19 adjust it to something different, they need to put a  
20 reason down. So that's something again where the  
21 employer, the company, can see that type of information  
22 through the electronic data and go and monitor them and  
23 explain to them, train them on the proper timekeeping.  
24 Those are -- there is more, but I think that addresses  
25 your question.



1 Q. So what's the standard as to how company  
2 employees actually record time, if any?

3 MR. DONOHUE: Object to the form.

4 A. When you say "actually record time," what do  
5 you mean by that?

6 Q. So I'm interested in knowing how employees  
7 record time worked, and I think you referred to it  
8 could be on paper, it could be electronic. I'm curious  
9 to know what the standard practice is in your  
10 experience.

11 MR. DONOHUE: Object to the form.

12 A. It varies based on the industry. A company I  
13 was working with recently, a number of people there  
14 don't have access to a computer because of the nature  
15 of their job. So they hand write their time on a paper  
16 time sheet, and they give that to someone else, an  
17 administrative person who does have access to a  
18 computer, and that person enters their time, again,  
19 daily.

20 But in other environments where virtually  
21 everybody has access to a computer because of the  
22 nature of their job, then there is typically an  
23 electronic timekeeping system. And they can go log  
24 into the system and it will often have a drop-down menu  
25 where they can -- you may envision -- one example I saw



1 had a series of rows sort of like a spreadsheet. So  
2 you could say if you worked 11 hours in a day and you  
3 worked on three different projects, you could put in  
4 the number of hours on the first project, put in a  
5 number of hours, and then select a drop-down menu and  
6 you would select the project that that number of hours  
7 was for. Then you go to the next row, put in the  
8 number of hours, go to the drop-down menu and select  
9 that, whatever those hours were. And then the third  
10 and so on. And then at the bottom of the page it  
11 totals so you can reconcile if you think you worked 11  
12 hours, if those sum to 11 hours, that's confirmation.

13 If you entered the numbers wrong and it sums  
14 to 21 hours instead of 11 hours, you realize, oh, I  
15 must have not put in the right numbers. Then you can  
16 have the opportunity to adjust it. What I just  
17 described is kind of a typical process.

18 Q. Why is accurate timekeeping important?

19 MR. DONOHUE: Object to the form.

20 A. Well, for many reasons. And one example would  
21 be, let's say, you have a cost reimbursement contract  
22 and the hours that you record -- the hours that  
23 employees record in many cases are the hours that are  
24 billed to the government. And if you record the wrong  
25 hours, the bill could be misstated, so not just the





1 employer record but the bill to the government could be  
2 misstated. So that's obviously a problem. Even if you  
3 do not have a cost reimbursement contract where it  
4 could cause a bill to be wrong, there's a category of  
5 cost called fringe benefits, and it includes things  
6 like health care and vacation and paid time off and  
7 401(k) and that sort of thing -- human resources type  
8 costs. And you need to accurately apportion their cost  
9 of fringe benefits to contracts.

10           You need to determine the amount of fringe  
11 benefits by hour -- not by person, not by day, but by  
12 hour. So if someone works 11 hours, the fringe benefit  
13 rate per hour is slightly smaller than if they worked 8  
14 hours. So if they don't accurately record their time,  
15 the fringe benefit hourly rate developed will be  
16 inaccurate and that could cause an overbilling to the  
17 federal government, that could cause a misapportionment  
18 of cost internally. So that's just not sound  
19 accounting or appropriate cost accounting.

20           There are other -- I use fringe benefits as an  
21 example. There are other indirect costs that it also  
22 affects if the costs were inaccurately recorded -- if  
23 the labor hours were inaccurately recorded.

24           Q. So I want to return to your report here. What  
25 were you retained to do in this case?



1           A. And I'm just on page 1, first paragraph,  
2 second sentence, "Kenrich was retained to perform an  
3 independent and objective analysis of the government  
4 contracts that are the subject of the dispute -- GEO's  
5 Federal Government contracts for a detention facility  
6 in support of US Immigration and Customs Enforcement's  
7 Seattle field office.

8           Q. So what about the contracts were you asked to  
9 analyze?

10          A. Well, determine if the solicitation process  
11 and the contracts awarded were typical of federal  
12 government procurement practices, and to review the  
13 practices related to certain passthrough costs, which  
14 included payments made to detainees in accordance with  
15 the voluntary work program, and if you will, the  
16 contract administration -- various contract  
17 administration practices related to the voluntary work  
18 program and the billing of costs, the billings to ICE  
19 and the oversight of the contract. That's the types of  
20 things I was asked to review.

21          Q. And I think we established earlier that at the  
22 time of your report you had not reviewed any contracts  
23 prior to the 2015 contract discussed here?

24          A. I believe that's correct.

25          Q. And I think -- correct me if I'm wrong. I



1 think in your report you state that you were told that  
2 they were generally consistent?

3 A. I was.

4 Q. And who told you that?

5 A. And I say in footnote 3 on page 4, "Kenrich is  
6 aware that GEO was also awarded predecessor contracts  
7 at NWDC in approximately 2005 and 2009, and Kendrick  
8 understands these contracts to be generally consistent  
9 with the 2015 contract." And I believe I was -- in the  
10 interview I had with GEO personnel, I brought that up,  
11 and then I -- based on my experience in the industry I  
12 was not surprised to hear that they would be generally  
13 consistent.

14 Q. Okay. Did you review any ICE contracts with  
15 contractors other than GEO in preparing your report?

16 A. In preparing my report, no.

17 Q. Have you ever?

18 A. Could you restate the question.

19 Q. Sure. So I mean, I'm asking whether as part  
20 of your report you reviewed similar contracts for  
21 companies other than GEO with ICE -- and it's not a  
22 question. I'm just explaining. And I think you said  
23 for purposes of my report, no, right? Am I  
24 misunderstanding?

25 MR. DONOHUE: Object to the form. Go



1 ahead.

2 A. Based on the context you added -- I mean, I've  
3 reviewed likely thousands of similar contracts.

4 Q. With ICE?

5 A. Not with ICE.

6 Q. So my question is with ICE.

7 A. I don't remember how many ICE contracts I've  
8 reviewed. I'm sure I reviewed some at least on the MDI  
9 matter that we looked at earlier. But it's hard -- I  
10 review so many contracts, it's just part of my practice  
11 somebody calls me and says, Hey, I need your advice on  
12 something. Here's my contract. Go to page 400, or  
13 whatever, and let's talk about how do I react to this.  
14 How do I comply with this. And I will say, Well, other  
15 people in your industry, this is how I understand  
16 people typically respond to that. This is my advice on  
17 the best way to handle that. So I'm sure I've seen ICE  
18 contracts. I don't remember how many.

19 Q. Okay. So I have a similar question, not  
20 necessarily limited to ICE, but DHS or INS; are you  
21 familiar with INS?

22 A. I am.

23 Q. So have you reviewed contracts between DHS and  
24 private contractors?

25 A. Yes.



1 Q. And can you give me examples of those  
2 contracts?

3 A. Okay. Well, I can give you some that -- it's  
4 hard to give -- I mean, I can't be exhaustive. But  
5 like Coast Guard is currently under DHS, and I've  
6 worked on multiple -- you're asking if I reviewed  
7 contracts by DHS? Contracts between DHS and  
8 contractors?

9 Q. Yeah.

10 A. And so I have reviewed multiple contracts  
11 between Coast Guard and companies. And Coast Guard is  
12 currently under DHS, and I believe when I reviewed them  
13 they were under DHS, I don't remember that  
14 definitively, but those fall into that. I've reviewed  
15 a contract for the provision of Canine Protective  
16 Services awarded by DHS to a contractor. There's a  
17 security one that I can't put my finger on, some  
18 security services. But there likely are others. Those  
19 are some examples.

20 Q. Did any of those DHS contracts relate to  
21 private detention services?

22 A. I don't believe so.

23 Q. And same question for INS. Have you reviewed  
24 contracts between INS and private contractors?

25 A. And this is before I authored the report -- or



1 your earlier question you limited it to before I  
2 authored the report.

3 Q. Let's go with ever, since it will be a more  
4 inclusive answer.

5 A. Ever. Yes. So I've reviewed a 2002 contract,  
6 a contract awarded July 2002 that was, I believe, by  
7 INS to CSC.

8 Q. What is CSC?

9 A. Correction -- I don't remember. I believe the  
10 first C was correction. I don't want to speculate.

11 Q. Okay. Can you tell me what that contract  
12 related to, what types of services, products?

13 A. So that was the one that I referred to earlier  
14 that may have been the first in the series on this  
15 matter -- that's vague. Let me restate that. That may  
16 have been the first contract at the Northwest Detention  
17 Center.

18 Q. Okay.

19 A. From July of 2015.

20 Q. So turning to your summary of opinions, the  
21 opinions you're offering in this case. I just want to  
22 walk through and make sure I understand what your  
23 opinions are. So at page 3 you say the solicitation  
24 process for contract HSCEDM-15-D-00015 and the  
25 resulting contract are typical of Government



1 procurements." Is that your opinion today?

2 A. It is my opinion, yes.

3 Q. And what other government procurement are you  
4 comparing this solicitation process to?

5 A. It's -- so over the course of my career, 33  
6 years, I've kind of developed a body of knowledge of  
7 the process by which the federal government, and, to a  
8 lesser extent, state governments and some foreign  
9 governments procure goods and services. And that's  
10 part of what I teach at George Washington University,  
11 and what I teach for the National Contract Management  
12 Association and the ABA and some others. That's --  
13 when I say the solicitation process here it's typical,  
14 I'm referring to that it's typical of U.S. government  
15 contracts for goods and services of this nature.

16 Q. So if I wanted to test that theory and compare  
17 against other contracts, what contracts would I compare  
18 it against?

19 MR. DONOHUE: Object to the form.

20 A. Of fixed-price contracts. I mean, there are  
21 different categories -- there is sealed bid, fixed  
22 price, and there's cost plus and commercial item. And  
23 this is very kind of typical of a FAR 15, federal  
24 acquisition regulation 15, a contract that is kind of a  
25 solicitation process that is executed in accordance



1 with FAR 15.

2 Q. So am I understanding correctly that what you  
3 are saying is that it followed FAR 15; therefore, it  
4 was typical?

5 MR. DONOHUE: Object to the form.

6 A. It's hard for me to summarize it quite like  
7 that. When I look at the cover sheet, that's a typical  
8 cover sheet, government form. When I look at the CLIN  
9 structure and how that's organized, that's typical.  
10 When I look at the performance work statement, that is  
11 typical. When I look at the clauses incorporated by  
12 reference from the FAR, that's a typical list for this  
13 type of procurement. When I look at the other  
14 documents referenced, all those things considered, you  
15 just look at it and it's kind of like it's typical. I  
16 knew there would be a listing of clauses incorporated  
17 by reference, and I knew what some of those clauses  
18 would be. And it proved to be true. And I thought I  
19 had a good guess at what the billing provisions would  
20 be, and when I checked the billing provisions, that's  
21 the way they were. So I'm trying to give you a flavor  
22 about why I think it's typical.

23 Q. Okay. So I think you referred to, was it a  
24 fixed cost? Was that what you said about what type of  
25 contract this is?





1 A. Yes.

2 Q. So what type of contract is the GEO-ICE  
3 contract? And let's pause for a moment. When we're  
4 referring to the contract, can we agree that we are  
5 referring to the 2015 GEO-ICE contract referred to in  
6 your report?

7 A. Yes.

8 Q. Just for clarity of the record. Okay. So  
9 what type of contract is that in your experience?

10 A. Well, I think I would like to distinguish  
11 maybe four different types. There's kind of a  
12 commercial item contract, there is a sealed bid  
13 contract, a FAR 15 contract, and then a cost plus  
14 contract.

15 Q. Okay.

16 A. This is fairly typical of a FAR 15 fixed-price  
17 contract.

18 Q. And why is that?

19 MR. DONOHUE: Object to the form.

20 Q. I'll restate. Why is the GEO-ICE contract  
21 typical of a FAR 15 fixed-price contract?

22 A. Well -- and I think I kind of answered that  
23 when I spoke earlier. It's been -- and I'll just say  
24 it's more than the contract, it's the -- the contract  
25 resulted from the solicitation process, and the entire



1 solicitation process is typical in my experience of a  
2 FAR 15 fixed-price contract.

3 Q. Okay. So let's focus on the fixed price part  
4 of that. What does "fixed price" mean?

5 A. By way of example, if you wanted to remodel  
6 your kitchen and you had drawings and you took the  
7 drawings to three different contractors and asked them  
8 to give you a price, a bid price, to remodel your  
9 kitchen in accordance with those drawings, that's a  
10 fixed-price contract. Another way of doing remodeling  
11 your kitchen is to do it on a time-and-material basis,  
12 T&M. And that would be you just have to hire a  
13 carpenter and say, I will direct your work, and you  
14 will bill me, and for every hour you work I will pay  
15 you \$20 an hour. And for all of your materials I will  
16 reimburse all of -- you give me the receipts and I will  
17 reimburse you for the cost of the materials and then  
18 I'll pay you for your \$20 per hour for every hour you  
19 work.

20 And a third type would be a cost  
21 reimbursement, and that's where you ask the carpenter  
22 what are their costs, even his own labor cost, not a  
23 rate of \$20 per hour but his cost. And then you pay  
24 him his cost. And then he has to demonstrate to you  
25 what his costs are, and his costs would include his



1 insurance, his insurance for working, his personal  
2 health insurance and things like that. His car, what's  
3 the depreciation on his car that he uses to, say, drive  
4 to and from the site. What have his tools cost, that  
5 sort of thing. So in those three you have cost  
6 reimbursement was last one, time and material, and  
7 fixed price. And this is pretty typical of a fixed  
8 price.

9 MR. DONOHUE: Can we take a break?

10 MR. POLOZOLA: Sure.

11 [A brief recess was taken.]

12 Q. [By Mr. Polozola] Okay. So I want to continue  
13 on with just your summary of opinions here. And I  
14 think on page 3 you say "There appears to have been no  
15 ambiguity between ICE and GEO about the Voluntary Work  
16 Program, the payment to program participants, and GEO's  
17 reimbursement for those payments, which is detailed in  
18 CLIN 0003 Detainee Voluntary Wages." Is that your  
19 opinion today?

20 A. It is.

21 Q. On the payment to detainees aspect of that  
22 sentence, what do you believe is unambiguous?

23 A. That they were to receive -- that it was to be  
24 a passthrough cost and that they were to receive a  
25 dollar a day -- a dollar a shift.



1 Q. And on that second issue of a dollar a shift,  
2 is it your position that the contract requires GEO to  
3 pay them a dollar per shift?

4 MR. DONOHUE: Object to the form.

5 A. Based on, like, the standards and practices in  
6 my work in the federal procurement, I think people  
7 would interpret that or would operationalize that as  
8 that is what they needed to do is pay them a dollar a  
9 day -- a dollar a shift, a dollar a day.

10 Q. Okay. What standards are you referring to?

11 A. Well, let me -- I mean, I could refer to the  
12 Nash and Ciminic Good Administration of Government  
13 Contracts, I could refer to the Contract Pricing  
14 Reference Guides by the Defense Acquisition University,  
15 could refer to the Formation of Government Contracts by  
16 Nash and Ciminic, and various other treatises that kind  
17 of form my opinions, the body of knowledge that I  
18 developed. But based on that, that's how a contractor  
19 would and should operationalize the contract.

20 Q. So I just want to understand clearly. This is  
21 how you interpret the contract?

22 MR. DONOHUE: Object to the form.

23 A. I'm at page 1, the third paragraph. I'll just  
24 say, I have not been asked to and do not express an  
25 opinion on the proper interpretation of regulations



1 such as the FAR and the HSAR. "Based on my," at this  
2 point, over 33 "years of working on government contract  
3 matters and teaching the practical application of FAR,  
4 I am knowledgeable about the procurement,  
5 subcontracting and accounting processes and procedures  
6 of companies with government contracts. Based on my  
7 work with hundreds of clients over many years,  
8 including numerous cases involving procurement  
9 practices by prime contractors and acquiring goods and  
10 services as well as the procurement practices of the  
11 federal government, I have extensive experience in  
12 assessing the appropriate practices for purchasing  
13 goods and services and the administration of government  
14 contracts."

15 So I'm addressing practices and I'm addressing  
16 the standards based on review of many, many contracts  
17 and solicitations and assisting companies in the  
18 administration of government contracts. And I think  
19 I've answered your question.

20 Q. Okay. So I'm going to refer back to page 3,  
21 and this is under the heading "Summary of opinions,"  
22 and it's the portion we reviewed a bit earlier, there  
23 appears to have been no ambiguity between ICE and GEO  
24 about the Voluntary Work Program, the payment to  
25 program participants, detainees, and GEO's



1 reimbursement for those payments, which is detailed in  
2 CLIN 003, Detainee Volunteer Wages." And my question  
3 was, are you offering an interpretation of the  
4 contract?

5 A. No.

6 MR. DONOHUE: Object to the form, asked  
7 and answered.

8 Q. Are you offering any opinions on whether ICE  
9 believed this contract to be ambiguous or unambiguous?

10 MR. DONOHUE: Could you restate that  
11 question, please.

12 Q. Are you offer any opinions as to whether ICE  
13 believed the contract to be ambiguous or unambiguous?

14 MR. DONOHUE: Object to the form.

15 A. I'll say based on my 33 years of experience  
16 that ICE behaved as if there was no ambiguity. They  
17 behaved as if the actions of GEO were what was  
18 intended.

19 Q. Did you speak with anyone from ICE?

20 A. I did not.

21 Q. So then continuing on through your summary of  
22 opinions here, you referred to GEO's expected rate of  
23 reimbursement for the \$1-a-day payments as reflecting  
24 passthrough costs, and you note that they were not  
25 marked up to include indirect cost, profit, or the



1 added cost of administering the VWP. And you go on and  
2 say, "GEO's invoice submission, and ICE's evaluation  
3 and payment processes, are typical of other billing,  
4 evaluation, audit, and payment practices I have  
5 evaluated during the course of my career." Is that  
6 your opinion today?

7 A. It is.

8 Q. And what other practices are you comparing the  
9 ICE-GEO process to?

10 A. Well, okay. I'll just take this in turn. The  
11 bills, the invoices, I've reviewed hundreds, certainly  
12 thousands of invoices from government contractors to  
13 agencies of the federal government. And this, the  
14 invoices here, the way they are structured are typical  
15 of matters like this with a CLIN structure such as we  
16 have here. The evaluation process and the audit  
17 process -- the audit process is typical in that ICE --  
18 I mean, the multiple bodies auditing the contractor's  
19 compliance with the contract from ICE to the quality,  
20 the surveillance, quality assurance surveillance plan,  
21 whatever that is addressed later to OSHA, to internal  
22 audits, to the state health agencies, et cetera. The  
23 audit is overseen here, the audit environment here is  
24 typical for a contract of this nature. And the payment  
25 practices are typical. And I'm basing that on the body



1 of knowledge I've developed with regard to payment  
2 practices by federal government agencies.

3 Q. Okay. And we'll move on. I think we're on  
4 page 4 now. You state at the end of the first  
5 paragraph, "it therefore does not appear that GEO's  
6 performance on the contract was deficient." And as I  
7 understand it, it's your opinion that it was not  
8 deficient because ICE did not pursue remedies or  
9 sanctions or termination of the contract in any way  
10 based on GEO's performance.

11 MR. DONOHUE: Object to the form.

12 Q. Am I understanding that correctly?

13 A. It's not limited to what you said, but that's  
14 part of it.

15 Q. Okay. Can you explain the summary here so I  
16 can understand what your opinion is on this?

17 A. Certainly.

18 MR. DONOHUE: Object to the form.

19 A. Well, from the beginning to the end -- and  
20 I'll expand on that. From the beginning to the end  
21 they appear to be in lockstep and in congruence on what  
22 was to happen. And I'll say that from the beginning,  
23 ICE circulated a solicitation that had certain  
24 requirements. And GEO submitted a proposal to ICE  
25 which mirrored those requirements, saying they would





1 provide the types of services with regard to the  
2 voluntary work program that ICE had communicated in its  
3 solicitation. GEO then developed procedures and a  
4 program to implement the voluntary work program, and  
5 the COR, contracting officer representative, approved  
6 of that.

7 And as time went on, there were minor  
8 adjustments. As for any working relationship, there  
9 are things that came up that had not been foreseen.  
10 And the parties were able to, between GEO and ICE and  
11 the ICE COR, they were able to work through those in  
12 that matter that appears to have been, and the record  
13 indicates, were satisfactory to the ICE COR. That in  
14 addition to the various remedies from adjustment of an  
15 invoice, reduction of an invoice from GEO to ICE, ICE  
16 could have reduced an invoice as some kind of penalty.  
17 And that was never done. And there were no cure  
18 notices, there was no negative CPARs. All that leads  
19 me to believe that GEO's performance on the contract  
20 was not deficient.

21 Q. So aside from the opinions we just discussed  
22 in summary form, are there other opinions you intend to  
23 offer in this case?

24 MR. DONOHUE: Object to the form.

25 A. And I have a hard time answering that type of



1 question. I don't know if I will testify at trial, I  
2 don't know what I will be asked if I do testify at  
3 trial. So if I testify at trial and you ask me some  
4 question that's not in the four corners of this report,  
5 I will answer it.

6 Q. Sure. I'm not asking whether you will answer  
7 my questions at trial. I'm thinking in terms of  
8 buckets here. We just discussed four major issues that  
9 you offered opinions on. Are there any other issues  
10 that you intend to offer testimony on that we have not  
11 discussed?

12 MR. DONOHUE: Object to the form.

13 A. Well, I'll say that -- I mean, my summary of  
14 opinions, which starts on page 3 and 4, that's still a  
15 summary of my opinions.

16 Q. Is that complete? Is that summary of opinions  
17 complete?

18 A. I believe it is.

19 Q. Okay.

20 A. I mean, I'll just say, if we go into some area  
21 that is not here and you ask my opinion, if I have an  
22 opinion, I will give it.

23 Q. Okay. So are you offering any opinions on  
24 whether GEO violated Washington's Minimum Wage Act?

25 A. I am not.



1 Q. Are you offering any opinions about whether  
2 GEO was unjustly enriched as alleged by Washington in  
3 this case?

4 A. I have formed no opinions related to that.

5 Q. Are you offering any opinions about whether  
6 GEO is obligated to comply with Washington's Minimum  
7 Wage Act?

8 MR. DONOHUE: Object to the form.

9 A. I have formed no opinions related to that.

10 Q. Are you offering any opinions about whether  
11 the ICE-GEO contract prevents GEO from complying with  
12 Washington's Minimum Wage Act?

13 MR. DONOHUE: Object to the form.

14 A. I have formed no opinions related to that.

15 Q. Okay. Now we get to the fun part.

16 [Exhibit No. 198 was marked for identification.]

17 MR. DONOHUE: That hasn't been marked  
18 previously?

19 MR. POLOZOLA: I think it has, but the  
20 reason I'm providing it is because as identified in the  
21 report, there's a Bates range. So I want to give a  
22 fresh, clean copy.

23 MR. DONOHUE: The Bates range is  
24 GEO-State 036825 through 037027.

25 MS. BRENNEKE: What was the Bates range?



1 MR. DONOHUE: 036825 to 037027.

2 MS. BRENNEKE: Can we unmark it and use  
3 Exhibit 129 instead? Because they're exactly the same.  
4 Is that okay? He can still look at that one.

5 MR. POLOZOLA: Sure.

6 Q. [By Mr. Polozola] This is Exhibit 129  
7 [handing]. Do you recognize this document?

8 A. Yes, I do.

9 Q. And what is this document?

10 A. It's a contract between ICE and the GEO Group,  
11 and the effective date is September 28, 2015.

12 Q. Is this the document you reviewed for purposes  
13 of your report?

14 A. Yes.

15 Q. And who signed this contract for GEO?

16 A. Amber Martin.

17 Q. Have you ever spoken with Amber Martin?

18 A. I have not.

19 Q. Who signed the contract for the government?

20 A. Roberta Halls.

21 Q. Have you ever spoken with Ms. Halls?

22 A. I have not.

23 Q. What's the time period for this contract?

24 A. Well, if all options are exercised, it would  
25 go from September 28, 2015, to September 27, 2025.



1 Q. So it's a ten-year contract if all options are  
2 exercised?

3 A. If all options are exercised, yes.

4 Q. What's the total value of the contract?

5 MR. DONOHUE: Object to the form.

6 A. I would have to go by option year to add that  
7 up, if you are assuming the ten-year period.

8 Q. Can we turn to -- do you see the Bates range  
9 on the bottom?

10 A. I do.

11 Q. So if you go to 035886.

12 A. Mine starts at 036.

13 Q. 036886, I'm sorry. My fault -- 866. Do you  
14 see the last line under the "supplies and services"  
15 column?

16 A. I do.

17 Q. So is that -- I'll just read it. "The total  
18 amount of award, \$700,292,089.08," is that -- in your  
19 understanding is that the full value of this 2015  
20 GEO-ICE contract?

21 MR. DONOHUE: Object to the form.

22 A. I wouldn't interpret it as that. I think you  
23 read the words correctly. It also refers to box 15G of  
24 the cover, which it lists 0, and there are so many  
25 assumptions -- well, I wouldn't interpret that as



1 the -- what did you refer to it as?

2 Q. The value of the award.

3 A. Yeah. I might say it's something like the  
4 estimated value of the award or something like that.  
5 When newspaper articles write about this sort of thing,  
6 that's what they might say.

7 Q. Okay. So when you say the "estimated value"  
8 of the award --

9 A. Estimated maximum value.

10 Q. Okay. So estimated maximum -- are you  
11 suggesting that there is the possibility that GEO would  
12 be paid less than this amount on this contract, even if  
13 all of the option years are exercised?

14 MR. DONOHUE: Object to the form.

15 A. Yes, I am suggesting that.

16 Q. And why is that the case?

17 A. Because there are -- well, many possible  
18 reasons. Some include contract modifications. There  
19 are changed orders, there are deductive change orders  
20 and additive change orders. And so deductive change  
21 orders is a way that it could be less. There's partial  
22 terminations for convenience that terminate part of it.  
23 Over such a long period of time, it's not uncommon for  
24 the parties to monitor the contract multiple times.

25 Q. Is it typical that contract values go down in



1 value over time?

2 A. It's certainly the case that not all options  
3 are awarded in many instances.

4 Q. So you mentioned contract modifications. Are  
5 you aware of whether there have been modifications to  
6 this contract?

7 A. I don't remember seeing that in the documents  
8 I've reviewed. I find it hard -- there have to have  
9 been with a contract of this size and complexity over  
10 this time period.

11 Q. So the modifications are part of the contract,  
12 though, once they are made; is that correct?

13 MR. DONOHUE: Object to the form.

14 A. That's the typical way of thinking of it, yes.

15 Q. And so going back to the first page here, I  
16 would like to understand what documents make up a  
17 contract or an award. So if you could just walk me  
18 through. There are these boxes, 17 and 18, towards the  
19 bottom. In your experience, what component documents  
20 make up an award or contract?

21 MR. DONOHUE: Are you asking about this  
22 contract?

23 MR. POLOZOLA: Well, I'm asking in his  
24 experience generally. But I am curious about this one.

25 Q. [By Mr. Polozola] So let's start with your



1 experience, and then I want to understand this one in  
2 particular.

3 A. So is your question what documents are  
4 typically a part of a contract?

5 Q. Uh-huh.

6 MR. DONOHUE: Object to the form.

7 A. Well, there's typically something similar to  
8 this first 42 pages, which is, I think of it as the  
9 CLIN structure. That is typically the first thing.  
10 There is typically a description of the specification  
11 or what is to be required. There is typically a  
12 performance work statement or a scope of work. There  
13 are typically a list of clauses incorporated by  
14 reference as well as some special clauses, sometimes  
15 called "H clauses" because they start with the letter  
16 H, that are written uniquely for the particular  
17 contract. So they're not just a copy of a clause from  
18 the FAR or the HSAR, but they are a special clause.  
19 There are often, then, references to different  
20 regulations outside of the FAR and HSAR that the  
21 contractor is required to adhere to or make reference  
22 to.

23 Q. Okay. So let's turn to the first page of the  
24 contract, which you are looking at now. So in box 18  
25 just above the signature by Roberta J. Halls, there is





1 a portion of that box that says "award." And then the  
2 last sentence says "Award consummates the contract  
3 which consists of the following documents, (a) the  
4 Government's solicitation and your offer, and (b), this  
5 award contract." So I guess my question is the  
6 solicitation, is that considered part of the contract  
7 in your experience?

8 A. It often is, not always, but it often is.

9 Q. So in this case do you understand this to mean  
10 that the government solicitation is part of the  
11 contract?

12 A. And I'll just reread that sentence. "This  
13 award consummates the contract which consists of the  
14 following document: (a) the Government's solicitation  
15 and your offer, and (b) this award/contract." And so  
16 you're asking if I think a typical -- in the industry,  
17 people would typically anticipate that the solicitation  
18 was part of the contract?

19 Q. And that's correct.

20 MR. DONOHUE: Object to the form.

21 A. In my opinion that's what the standards and  
22 practices would say, yes.

23 Q. So this is not out of the ordinary?

24 A. This is not out of the ordinary. I don't want  
25 to say that the solicitation is always part of the



1 contract, but it is common.

2 Q. And in this case it appears, likewise, that  
3 GEO's offer is part of this contract?

4 A. Yes.

5 MR. DONOHUE: Object to the form.

6 Q. Okay. So we were discussing earlier the firm  
7 fixed-price contract, and I just want to turn back to  
8 that for a moment. Why does the government use firm  
9 fixed-price contract structures?

10 MR. DONOHUE: Object to the form.

11 A. Well, it's a -- you often think of it in terms  
12 of the ends of a spectrum, with cost reimbursement  
13 contracting at one end of the spectrum and a fixed  
14 price being at the other end of the spectrum. And FAR  
15 16 -- well, and kind of the standards in the industry  
16 are that if the scope of work can be adequately  
17 defined, then it should be a fixed-price contract. And  
18 if the scope of work is too vague to well define, then  
19 it should not be a fixed-price contract; it should be a  
20 T&M or cost reimbursement contract. So this -- because  
21 the scope of work could be adequately well defined, the  
22 contracting officer, which would be typical in a  
23 circumstance like this, the contracting officer decided  
24 the solicitation should be on a fixed-price basis.

25 Q. So under a fixed-price contract, does the



1 contractor bear the risk if costs increase or does the  
2 government bear that risk?

3 MR. DONOHUE: Object to the form.

4 A. In general, the risk of a cost increase is  
5 more on the contractor than the government, but it's  
6 not exclusively on the contractor. Often the  
7 parties -- there are things that are outside of the  
8 scope of work or so different than the scope work. So  
9 if the government -- an example that's often bantered  
10 around, if the government is buying Jeeps and then it  
11 says, I want a Jeep with a fifth wheel, that's outside  
12 of the scope of the contract, and they mod the contract  
13 to address that cost because the contractors can say,  
14 Well, no, what you've asked for is outside of my  
15 general scope.

16 Q. So under this contract between GEO and ICE, is  
17 it structured in a way such that GEO is guaranteed a  
18 certain amount of profit?

19 A. I don't believe so.

20 Q. So is the next step from that if certain costs  
21 increase, generally speaking that cuts into GEO's  
22 profit, or is it the case that they are reimbursed for  
23 increases in costs?

24 MR. DONOHUE: Object to the form.

25 A. And that's because of the explanation I just



1 gave about mods to the contract. It's hard to say in  
2 generality. If there's an area where the contractor  
3 estimated what it was going to cost and put that in  
4 their price, and then they just missed the estimate, it  
5 was not a good estimate. And there was no change in  
6 scope, everything was as planned, then they generally  
7 would not get increased cost; they'd get a mod to  
8 increase what they're paid. But if it's outside of  
9 their control, more often they would get a mod.

10 Q. So can we turn to the second page, which I  
11 think you called the CLIN structure; is that accurate?  
12 Is that how you refer to this?

13 A. That is how I refer to this. I mean, it's  
14 just a continuation sheet, technically, of this form,  
15 but it's where the CLIN structure starts.

16 Q. Okay. So what does the CLIN 0001, what does  
17 that encompass generally?

18 A. Well, it's for the base period September 28,  
19 2015, through September 27, 2016. CLIN 00001 just says  
20 "detention services IAW," which stands for in  
21 accordance with, "the performance work statement." And  
22 its estimate says "estimated 1,575 bed days."

23 Q. So below that where it says CLIN 0001A, is  
24 that part of CLIN 1?

25 A. Yes. That's referred to as, like, a subCLIN



1 or a subpart of CLIN 1.

2 Q. Okay. So I certainly don't need you to read  
3 each one, we both have it in front of us. But I just  
4 want to understand generally what is encompassed in  
5 each subclin for CLIN1.

6 MR. DONOHUE: Object to the form.

7 A. Well, okay. So 0001A is for -- the contractor  
8 GEO will be paid a certain minimum amount, and that is  
9 based on, they estimate, 1,181 beds each day. And so  
10 if you multiply 1,181 beds times 366 days, that's for  
11 that year, then you get 423,246. And so you would  
12 multiply that number of bed days by the unit price that  
13 was developed in GEO's proposal, the unit price for a  
14 bed day of \$115.63, and you get a number. Now, they  
15 made a mistake. They transposed a digit when they went  
16 from column B to column C. You'll see that in CLIN 1A,  
17 1,181 times 366 yields 423,246, and what they've got  
18 under "quantity" is not that number, but it's 432,246.  
19 So they transposed a few digits. But they multiplied  
20 the incorrect number by the unit price to get the  
21 amount of \$49,980,604.98 for the amount for CLIN 1A for  
22 the base year.

23 Q. So the unit price, \$115.63, is that what would  
24 be referred to as the "bed day rate?"

25 A. Yes.



1 Q. What is the bed day rate? Not what is the  
2 number, but how would you define?

3 A. Right. Well, it is GEO's proposed price for  
4 bed days. And GEO submitted its pricing sheets and its  
5 final proposal revision showing how it built up its  
6 cost and profit for the CLIN 1A and came to 115.63 in  
7 its final proposal revision. And if memory serves,  
8 GEO's final proposal revision includes for CLIN 1A  
9 \$115.63 for a bed day, and ICE accepted that offer, and  
10 that's how it gets to this form.

11 Q. Okay. So moving on generally to CLIN 2,  
12 because I'm sure we will be back to this topic, but --

13 MR. DONOHUE: Can we do lunch before  
14 CLIN 2?

15 MR. POLOZOLA: CLIN 2 will be very fast.

16 MR. DONOHUE: It's okay with me.

17 Q. So for CLIN 2, can you just describe generally  
18 what falls into that category of line items?

19 A. Well, it's transportation services in  
20 accordance with the performance work statement. And  
21 there are subCLINS under CLIN 2. So there is a 2A, 2B,  
22 2C, 2D, 2E, 2F, so several subCLINS. And it's for  
23 transportation services.

24 Q. Okay.

25 MR. POLOZOLA: We can take a break.



1 [Deposition recessed at 12:31 p.m. to be  
2 reconvened at 1:30 p.m.  
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1 AFTERNOON SESSION

2 1:28 P.M.

3 --oOo--

4  
5 EXAMINATION RESUMED

6 BY MR. POLOZOLA:

7 Q. So picking up from where we were, I think we  
8 were discussing the CLIN structure. We went through  
9 CLIN 1 which we discussed payment using a bed day rate,  
10 which is a fully burdened rate; is that correct?

11 MR. DONOHUE: Object to the form.

12 A. I wouldn't use the term "fully burdened" with  
13 respect to that. It is the price per day, and I'm  
14 looking at CLIN 1A where it's like a bed day costs  
15 115.63. So that is the price. And the reason I'm  
16 making that is there is cost and price and this is a  
17 price. This is what GEO is charging ICE for a bed day,  
18 and the price that ICE has accepted for a bed day,  
19 subject to all the rest of the terms and conditions.

20 Q. Do you have an understanding of what the  
21 phrase "fully burdened" refers to?

22 A. I do.

23 Q. What is your understanding of that term?

24 A. That's kind of an informal term, but when  
25 developing a price, a typical process is to look at all





1 kinds of different direct costs and then add indirect  
2 costs and then add to that profit or subtract from that  
3 loss. So direct costs are if you're building a Jeep,  
4 it's the peoples' hands on the assembly line putting  
5 the Jeep together. Indirect costs are like the HR  
6 department or the fringe benefits we talked about  
7 earlier, or the home office building, the rent on the  
8 home office building, those are all indirect costs that  
9 are allocated out to all the direct costs in some form.

10 And so fully burdened, although it is an  
11 informal term that's not -- people use it differently  
12 sometimes. But typically it means it's the direct cost  
13 plus all the different categories of indirect cost have  
14 been added.

15 Q. And under the CLIN 1 line item, does that unit  
16 price reflect a fully burdened cost as you understand  
17 that term?

18 MR. DONOHUE: Object to the form. Asked  
19 and answered.

20 A. It reflects a price.

21 Q. Right. So included -- let me just pause for a  
22 second. That price was developed in the proposal,  
23 correct, in GEO's proposal to ICE?

24 A. Yes.

25 Q. In coming up with that number, did GEO account



1 for its indirect costs, its direct costs?

2 A. And I don't remember the number 115.63,  
3 although it may well be in GEO's final proposal  
4 revision. But there is a spreadsheet in GEO's final  
5 proposal revision where they do the type of cost plus  
6 profit buildup that I described earlier. And if we  
7 were to go look at that and under CLIN 1A, it may well  
8 have developed down to the 115.36; but I don't remember  
9 if that's the number there.

10 Q. And so we also discussed the CLIN 2  
11 transportation services. That was just before our  
12 break. And so turning to CLIN 3.

13 A. If we could pause a moment on transportation  
14 services.

15 Q. Sure.

16 A. [Witness reviews page.] Well, because we were  
17 just talking about cost and price, I will just add,  
18 since we're in transportation services, so CLIN 2A  
19 refers to a fixed flat rate for 18 vehicles. And so  
20 that fixed flat rate is \$328,712 a month. And that's  
21 different than CLIN 2B, which is the estimated fuel  
22 cost for vehicles. So that's the fuel cost, and that  
23 is -- it's got an estimated monthly cost of \$25,000.  
24 And the point being that's a situation where they just  
25 submit their receipts for fuel and they get their cost



1 reimbursed; not burdens, but just what they paid at the  
2 service station for the fuel, that's what they get  
3 reimbursed. Whereas 2A, in the earlier CLINs, were  
4 more reflective of a price which is -- which GEO likely  
5 used a cost buildup plus profit to get to that price.

6 Q. Okay. Thank you. So looking at 2B when  
7 you're drawing the distinction between price and cost.  
8 If the cost goes above this not-to-exceed amount, can  
9 GEO be reimbursed for those costs?

10 MR. DONOHUE: Object to the form.

11 A. If GEO and ICE come to an agreement on being  
12 reimbursed for those costs, then yes, they can.

13 Q. And if GEO and ICE do not come to an agreement  
14 on being reimbursed for those costs, what happens?

15 A. Well, and there's a sentence here, the third  
16 sentence under 2B says "this is a not to exceed of  
17 \$300,000." And that is typically -- the contract  
18 administration personnel typically view that as a  
19 ceiling unless they get approval for higher.

20 Q. So back to the question, which is, if GEO,  
21 let's say the cost of fuel spikes and if they spend  
22 more than \$300,000 in a given year, do they eat that  
23 cost or do they get reimbursed for that cost?

24 MR. DONOHUE: Object to the form.

25 A. That's not -- I can't give a yes/no -- I can't



1 give one or the other. It depends. They would work  
2 with the COR and with ICE, and they may get an increase  
3 and they may not.

4 Q. Well, so let's take it to that next step then.  
5 Let's say they ask and ICE says no. What happens then?

6 MR. DONOHUE: Object to the form.

7 A. And lots of things could happen, and I can  
8 give you my speculation of what could happen. But what  
9 happened here I don't know.

10 Q. Sure. We're speaking in hypotheticals based  
11 on your knowledge of how the industry operates,  
12 correct?

13 A. Yes.

14 Q. So what is typical in this situation if a  
15 contractor exceeds a not-to-exceed cost in the  
16 contract?

17 MR. DONOHUE: Object to the form.

18 A. For something like fuel cost, it's typical for  
19 the government to increase, to say I understand it was  
20 only an estimate in the first place and I will increase  
21 your funding.

22 Q. Okay. So going to CLIN 3, can you explain to  
23 me what services are encompassed under that line item?

24 A. Well, this is ICE requiring GEO to have a  
25 voluntary work program.



1 Q. This line item requires GEO to have a  
2 voluntary work program; is that your statement?

3 MR. DONOHUE: Object to the form.

4 A. This is how -- this is addressing payment, and  
5 so this is -- other places the requirement -- well,  
6 here and other places is the requirement for the  
7 voluntary work program. And this is how GEO is to bill  
8 ICE and how GEO is to pay detainees.

9 Q. Okay. So on that point is it accurate to say  
10 that CLIN 3 addresses the rate at which ICE must  
11 reimburse GEO for payments made to detainees who  
12 participate in the voluntary work program?

13 A. It is both the rate at which ICE will  
14 reimburse GEO and GEO will pay the detainees. It's  
15 both.

16 Q. So I just want to understand. So yes to the  
17 question, but there is something additional, which is,  
18 if I am understanding what you're saying, it's your  
19 position that this sets forth a requirement that GEO  
20 pay detainees \$1 a day; is that accurate?

21 MR. DONOHUE: Object to the form.

22 A. That is accurate.

23 Q. Where in line item 3 does it state that GEO is  
24 required to pay detainees \$1 a day?

25 A. The second sentence "Reimbursement for this



1 line item will be at the actual cost of \$1 per day per  
2 detainee.

3 Q. And you understand that to mean that GEO is  
4 required to pay \$1 per day?

5 A. This is about payment terms primarily, and we  
6 can go to other places in the contract for more context  
7 on this, but they are saying that GEO's actual cost  
8 will be \$1 per day per detainee.

9 Q. Okay. So I just want a clear, it's a yes or  
10 no question. Is it your position that this line item  
11 requires GEO to pay only \$1 per day to detainees  
12 participating in the voluntary work program?

13 MR. DONOHUE: Object to the form.

14 A. In my opinion that requirement is throughout  
15 this document and others, but here is part of the  
16 story. And part of the story is saying that it's the  
17 actual cost. They're saying your actual cost will be a  
18 dollar per day.

19 Q. Okay. So where else in the contract -- you've  
20 referred to other places. Where else in the contract  
21 does it state that GEO is required to pay detainees in  
22 the voluntary work program \$1 per day?

23 A. Well, if we go to the paragraph related to the  
24 voluntary work program, that's one place.

25 Q. Which paragraph are you referring to?



1 A. It's in the solicitation, PDF page 78.

2 Q. Is there a Bates number on the bottom of that  
3 page?

4 A. There likely is but I don't know the Bates  
5 number.

6 Q. Okay.

7 [Exhibit No. 198 was marked for identification.]

8 Q. And to help you out here, the document I just  
9 provided you starts with Bates number GEO-State 040430  
10 and continues on through 040660. And I'll note that  
11 this is the document identified in your appendix 3 as  
12 document 3 solicitation. That's the full Bates range  
13 that you cited in your report. Is that the  
14 solicitation you were referring to a moment ago?

15 A. It appears to be. Can you restate the  
16 question.

17 Q. That question I asked you was what portion of  
18 the contract says that GEO is required to pay detainees  
19 only \$1 per day, and you referred to a paragraph on the  
20 voluntary work program from the solicitation, I  
21 believe. And I think you mentioned page 78, which  
22 corresponds to the Bates number 040507. Is that the  
23 paragraph you were referring to?

24 A. That and Bates 040433, which is CLIN 3 of the  
25 solicitation.



1 Q. Okay. So let's take those in turn. Starting  
2 with the paragraph at 040507, where does it state in  
3 this paragraph that GEO is required to pay detainees  
4 only \$1 per day?

5 A. This is the directive to have and manage a  
6 detainee work program, and it does not address the  
7 amount that the detainees are to be paid.

8 Q. Okay. So can we agree that this paragraph  
9 does not require GEO to pay detainees only \$1 per day?

10 MR. DONOHUE: Object to the form.

11 A. It does not address the payment.

12 Q. So I just want to be clear. If it doesn't  
13 address the payment, can it require GEO to pay only a  
14 dollar per day?

15 MR. DONOHUE: Object to the form.

16 A. It does not address a requirement to pay any  
17 amount to detainees.

18 Q. Okay. So turning back to 040433, which I  
19 think you referred to, this appears to be CLIN 3 in  
20 this solicitation. Are there differences between this  
21 CLIN 3 and the CLIN 3 in the contract that we were  
22 discussing?

23 A. I believe they're very similar if not  
24 identical, but it's another evidence of a dollar per  
25 day, actual cost of \$1 per day per detainee.





1 Q. And where in -- if your answers will be the  
2 same as the contract, feel free to let me know, but  
3 I'll ask anyway. Where in this CLIN 3 line item does  
4 it say that GEO is required to pay only \$1 per day to  
5 detainees participating in the voluntary work program?

6 A. Well, when it says actual cost. In the  
7 vernacular of federal procurement, we talked about cost  
8 versus price, but this is saying that you will be  
9 reimbursed your actual cost, meaning your cost is \$1  
10 per day per detainee.

11 Q. So I want to understand that a little bit. Is  
12 there a definition of actual cost in the FAR?

13 A. Yes.

14 Q. Okay. What's that definition?

15 A. I thought I had it in a foot note to the  
16 report, but I don't. And I don't remember -- I can't  
17 quote it from memory, the cost.

18 Q. So I'm going to read from page 10 of your  
19 report that says "The definition of actual costs  
20 according to FAR 31.001 is 'amounts determined on the  
21 basis of costs incurred, as distinguished from  
22 forecasted costs.'" Does that appear accurate, the  
23 definition?

24 A. Yeah. With the focus in that, the more  
25 relevant phrase for your question is it reads amounts



1 determined on the basis of costs incurred as  
2 distinguished from forecasted cost. And costs incurred  
3 is what we're -- when you say actual cost and costs  
4 incurred, they mean pretty much the same thing in the  
5 context we're discussing right now.

6 Q. Okay. So under this definition and as used in  
7 CLIN 3 of actual cost, would it be appropriate for GEO  
8 to bill ICE for what it expected to spend on detainee  
9 wages versus what it actually spent?

10 MR. DONOHUE: Object to the form.

11 Q. Do you understand the question?

12 A. Well, you ask about billed and then you also  
13 were talking about CLIN 3. And CLIN 3 includes a  
14 forecast.

15 Q. Yeah, so let's talk about that because that's  
16 really what I'm asking about. So this number \$114,975,  
17 that's the amount listed for CLIN 3, correct?

18 A. It is the amount, yes.

19 Q. Okay. So imagine a world in which GEO did not  
20 pay that full amount to detainee workers. Let's say it  
21 spent a hundred thousand dollars. Could GEO still bill  
22 ICE \$114,975?

23 A. Typically no, not based on what the CLIN 3  
24 says and not based on typical practice. Now, I haven't  
25 gone through to see if there is something that



1 supercedes that in this document, but typically no.

2 Q. So actual cost here, it prohibits GEO from  
3 billing ICE for forecasted costs, correct?

4 MR. DONOHUE: Object to the form.

5 A. Well, I'll say it affirmatively, actual cost  
6 here means that they pass through whatever their costs  
7 are, that they bill ICE what their actual costs,  
8 whatever they incur, and they are to incur a dollar a  
9 day per detainee and that that is what they are to bill  
10 ICE.

11 Q. Do you know how that amount, \$114,975, was  
12 determined?

13 A. I've seen a bill where they -- no, I don't  
14 think I have. I think I've read reference to it. But  
15 to answer your question simply, no, I do not.

16 Q. Under CLIN 3 that amount can be exceeded,  
17 correct?

18 A. It cannot be exceeded.

19 Q. Could it be exceeded with approval by the  
20 contracting officer?

21 A. Within the second sentence, "Contractor shall  
22 not exceed the amount shown without prior approval by  
23 the contracting officer. This is a not to exceed of  
24 \$114,975." So it says that the contractor shall not  
25 exceed that amount without prior approval of the



1 contracting officer.

2 Q. Right. So am I misunderstanding that ICE  
3 could give GEO permission to exceed this amount and  
4 bill ICE for an amount above \$114,975?

5 A. That's my understanding, yes.

6 Q. Are you aware of whether GEO has sought  
7 permission to exceed payments under CLIN 3 from ICE?

8 A. Definitively, no, I don't.

9 Q. Does CLIN 3 or anywhere else in the contract  
10 state that GEO is limited to paying detainees \$1 per  
11 day?

12 MR. DONOHUE: Object to the form.

13 A. CLIN 3 indicates that GEO is limited to paying  
14 the detainees to \$1 per day.

15 Q. So does GEO have the option of paying  
16 detainees more than \$1 per day in your opinion?

17 A. Not without -- this program is an ICE program.  
18 If ICE told GEO, We want you to pay something other  
19 than a dollar per day, ICE has the ability to direct  
20 GEO to do that. And under a circumstance like that, I  
21 think it would be typical of GEO to follow the  
22 directions given by the contracting officer or the COR.

23 Q. So back to kind of the question that started  
24 this part of our conversation. In addition to CLIN 3  
25 and the paragraph on the voluntary work program that



1 you cited from the solicitation, are there any other  
2 portions of the contract that require GEO to pay only  
3 \$1 per day to detainees in the voluntarily work  
4 program?

5 MR. DONOHUE: Object to the form.

6 A. I mean, the contract requires GEO to develop  
7 and administer the voluntary work program. And part of  
8 that includes kind of practices, policies and  
9 procedures that are approved by ICE and that include an  
10 agreement with each detainee that volunteers. And that  
11 agreement indicates \$1 per day.

12 Q. So I didn't understand that last point. Are  
13 you saying that ICE requires GEO to pay only \$1 per day  
14 because the detainees agree to accept \$1 per day? Feel  
15 free to clarify. That's how I understand what you're  
16 saying, so I want to be clear here.

17 MR. DONOHUE: Object to the form.

18 A. I'm saying that GEO, under ICE's direction,  
19 developed various documents including a detainee  
20 handbook that they would give to detainees when they  
21 come. And other policies and procedures and practices  
22 include this agreement, a template of an agreement,  
23 that GEO will reach with each detainee that volunteers.  
24 So I'm saying because ICE agreed, approved those  
25 documents, directed how those documents be developed



1 and then approved them after they were developed, that  
2 ICE has directed effectively that it be a dollar a day  
3 paid to the detainees.

4 Q. Okay. So are you aware of whether GEO has  
5 ever paid detainees more than \$1 a day for  
6 participation in the voluntary work program?

7 A. I have read about that, yes.

8 Q. So in that situation what happens from a  
9 billing perspective?

10 MR. DONOHUE: Object to the form.

11 A. When you said "in that circumstance," is that  
12 what you said?

13 Q. Sure.

14 A. Okay. So which circumstance?

15 Q. When GEO has paid detainees more than \$1 per  
16 day for participating in the voluntary work program,  
17 what's the next step from a billing perspective there?  
18 I'm just trying to understand how this happens.

19 MR. DONOHUE: Object to the form.

20 A. Well, okay. So I don't know -- the record was  
21 not crystal clear on the circumstances. One at least  
22 involved the barber shop and there being, like,  
23 different roles that could be played at the barber shop  
24 so that a detainee could work a shift in one role and  
25 then a shift in another role in the barber shop in the



1 same day, and that that was approved by ICE, the COR,  
2 and billed as such. So it was effectively -- I don't  
3 know if ICE suggested it to GEO or GEO proposed it to  
4 ICE, but the contracting parties agreed and it was  
5 billed that way is my understanding.

6 Q. And is that through an equitable adjustment or  
7 some other mechanism?

8 MR. DONOHUE: Object to the form.

9 A. Typically you would not enter into a  
10 modification to the contract or an equitable adjustment  
11 for something as small as that. Typically that would  
12 be something that the parties would work out with short  
13 of actual modification to the contract. But let me be  
14 clear, I don't know if they mod'd the contract over  
15 that instance.

16 Q. So kind of on the same point, back to CLIN 3  
17 where it says "contractor shall not exceed the amount  
18 shown without prior approval by the contracting  
19 officer." Can you walk me through typically how that  
20 request goes to the contractor or to the contracting  
21 officer?

22 MR. DONOHUE: Object to the form.

23 A. You're asking, like, hypothetically typically?

24 Q. Well, I'll clarify. I'm assuming you don't  
25 know in this specific case whether GEO did or did not,



1 based on your prior answer. I think you said you  
2 weren't aware whether they had, how they had done it.  
3 So yes, I'm asking typically for a request to exceed  
4 the amount shown here under the contract, kind of just  
5 mechanically what form does that take? That's what I'm  
6 trying to figure out.

7 MR. DONOHUE: Object to the form.

8 A. Typically there are routine meetings between  
9 the COR and the contractor. Say, for example, weekly  
10 meetings. And in those weekly meetings they might come  
11 up and say, As you know, we have had more detainees  
12 volunteer than we had estimated when we put together  
13 the estimate of 114,975. And in this hypothetical  
14 dialogue, ICE says, Yeah, I am aware that there's been  
15 more. Well, we have a not to exceed of 114,975, and if  
16 we continue to allow this many detainees to volunteer,  
17 we will exceed that, says GEO. And ICE responds, Well  
18 this is an ICE program, and in my hypothetical here,  
19 ICE says, Fine. I'll mod the contract to increase that  
20 ceiling. So the ceiling is increased from 114,975 to  
21 some higher number.

22 Q. And under your scenario, if ICE says no, is  
23 GEO required to continue the program and eat the cost?  
24 What is their remedy there?

25 MR. DONOHUE: Object to the form.





1           A. I would have to relook at the requirement, the  
2 details of the requirement, if it says shall or may  
3 with regard to allowing detainees to volunteer.

4           Q. And which requirement are you thinking of?

5           A. I think it's in the contract here, and maybe  
6 it's the page that we looked at earlier.

7           Q. Are you in the solicitation or the contract?  
8 Just to clarify.

9           A. I'm in solicitation. Do you remember the page  
10 from the contract we discussed earlier?

11          Q. Which page are you asking about?

12          A. It was the detainee work program, voluntary  
13 work program.

14          Q. It was page 78 of the solicitation -- or 82.  
15 So it's 036906 -- I think this is what you are asking  
16 about. You can confirm.

17          A. Well, to answer your question, I was thinking  
18 in terms of whether ICE has the ability -- I'm sorry,  
19 whether GEO has the ability to say no to a volunteer or  
20 if they have to accept all volunteers. I think I've  
21 seen that in a document, but it's not here and -- so  
22 I'm not sure I can answer your question.

23          Q. So if you can turn in the contract GEO-State  
24 to 036867.

25          A. 036867?



1 Q. Yes. Section C description specification  
2 performance work statement. So at the bottom of this  
3 page, the last sentence, or the last paragraph rather,  
4 says "The following constraints comprise the statutory  
5 regulatory policy and operational considerations that  
6 will impact the contractor."

7 A. I see that.

8 Q. So if you flip over to page 44, the last  
9 sentence of that paragraph says "Constraints include  
10 but are not limited to," if you go down to J), it says  
11 "The ICE/DHS performance-based detention standards, a  
12 copies obtainable on the ICE Internet website." Is it  
13 your understand that ICE/DHS performance-based  
14 detention standards, do you understand that to be  
15 what's referred to as the PBNDS?

16 A. Yes.

17 Q. So does the contract incorporate the PBNDS  
18 that ICE establishes?

19 MR. DONOHUE: Object to the form.

20 A. You asked does it incorporate it?

21 Q. Yeah.

22 A. I don't know if it incorporates it.

23 Q. Is GEO required to follow the PBNDS under the  
24 terms of the contract?

25 MR. DONOHUE: Object to the form.



1           A. In certain aspects at least. I believe so in  
2 certain aspects.

3           Q. Okay. So down to q), it says "Applicable  
4 federal, state, and local labor laws and codes." Do  
5 you understand this provision to mean that GEO must  
6 comply with applicable federal, state, and local labor  
7 laws and codes?

8                       MR. DONOHUE: Object to the form.

9           A. I'll just read it. It says "Constraints  
10 include but are not limited to." And one of the things  
11 that it includes there is item Q.

12          Q. So is that a yes or a no?

13                       MR. DONOHUE: Object to the form.

14          A. Applicable federal, state and local labor laws  
15 and codes is included as one of the constraints of page  
16 43 and 44 of the contract that impact the contractor.

17          Q. So is this a typical list of constraints in  
18 the contracts you've seen in your experience?

19          A. Yeah. This is a typical -- I mean, and this  
20 says this makes reference to the impact of the  
21 contractor. "The contractor has become familiar with  
22 all constraints affecting the work to be performed.  
23 They may change over time. Contractor is expected to  
24 be knowledgeable of any changes to the constraints and  
25 perform in accordance with the most current version."



1 So this is not an atypical list.

2 Q. And for q. specifically, applicable federal,  
3 state and local labor laws and codes, is that a typical  
4 constraint that is included in federal contracts?

5 A. Sometimes it will have stronger language than  
6 this, but some reference to them is typical, yes.

7 Q. So turning back to the PBNDS, under j, did you  
8 review the PBNDS in preparing your report?

9 A. I did.

10 Q. Okay. And which version did you review?

11 A. I believe it was the 2011 version updated in  
12 2016.

13 Q. And had you reviewed, or have you reviewed,  
14 any other versions of the PBNDS?

15 A. I don't believe so.

16 Q. Were you familiar with the PBNDS before you  
17 provided your report in this case?

18 A. I don't remember seeing it before. I may have  
19 in that MDI matter I mentioned, but I don't recall it.

20 Q. Okay. Are you aware of whether the PBNDS have  
21 changed in any way during the period of the GEO-ICE  
22 contract?

23 A. And you're referring to the 2015 contract.

24 Okay. So in the version that I saw there were some  
25 red, I believe edits in red, that were intended to show



1 the updates for the 2016 update. So if I am  
2 interpreting that correctly, then those red edits would  
3 have been during the performance of this contract.

4 Q. Okay. So I would like to understand in your  
5 experience where a contract incorporates another set of  
6 standards but the standards changed during the course  
7 of the contract, does that mean the contractor's  
8 obligations under the contract changed?

9 MR. DONOHUE: Object to the form.

10 A. I can't answer that as a blanket statement. I  
11 know that in significant instances they do not. You  
12 have to go to the FAR clauses incorporated by  
13 reference. You don't go to the current FAR. You go to  
14 the date of the FAR clause because it's incorporated by  
15 reference and go to that earlier date in the FAR  
16 clause. For other things, it may require that it be  
17 updated. So I don't think I can answer that as a  
18 blanket statement.

19 Q. If you could also turn to in the contract  
20 036876.

21 A. I'm on that page.

22 Q. Okay. There is a provision under  
23 "Ambiguities," the first sentence reads "All services  
24 must comply with the performance work statement and all  
25 applicable federal, state and local laws and



1 standards." Is it your understanding that under the  
2 terms of this contract GEO is required to comply with  
3 Washington law?

4 MR. DONOHUE: Object to the form.

5 A. I have no opinion about Washington law in this  
6 matter. I think you did read the sentence correctly.

7 Q. So GEO is required to comply with all  
8 applicable federal, state and local laws and standards?

9 MR. DONOHUE: Object to the form.

10 A. It says in this sentence "All services must  
11 comply with the performance work statement and all  
12 applicable federal, state and local laws and  
13 standards."

14 Q. And to be clear, we are looking at part of the  
15 contract, correct?

16 A. Right. And it further says, two sentences  
17 later, "If the contractor is unable to determine which  
18 standard is more stringent, the contracting officer  
19 shall determine the appropriate standard."

20 Q. So the sentence just before that says "Should  
21 a conflict exist between any of these standards, the  
22 most stringent shall apply." Do you understand this  
23 provision to mean that if Washington law is more  
24 stringent than what is set forth in the contract, GEO  
25 is required to comply with Washington law?



1 MR. DONOHUE: Object to the form.

2 A. Yeah. I have not done that type of -- I don't  
3 really have a considered opinion on that point. I  
4 haven't really thought through that.

5 Q. To your knowledge has GEO asked ICE which  
6 standard did the Washington minimum wage or the \$1 per  
7 day amount apply under the terms of this contract?

8 MR. DONOHUE: Object to the form.

9 A. I don't know if GEO has asked ICE. That was  
10 your question, right? I don't know if GEO has asked  
11 ICE that. I know that ICE has continued to pay to  
12 reimburse GEO for the cost of the detainee work  
13 program, the passthrough cost, and has not found any  
14 compliance issues or any noncompliance with respect to  
15 GEO's administration of the voluntary work program.

16 Q. If you can turn to 036906, page 82 under the  
17 PDF page numbers.

18 A. Okay.

19 Q. So under this section, it says "Manage a  
20 Detainee Work Program," I believe. This is what we  
21 were looking at earlier. Does this provision require  
22 GEO to develop a voluntary work program at Northwest  
23 Detention Center?

24 A. Yes.

25 Q. Does it place constraints on how GEO does



1 that?

2 MR. DONOHUE: Object to the form.

3 A. Throughout these five paragraphs it does have  
4 some constraints, yes.

5 Q. So the first sentence where it says "and will  
6 adhere to the ICE PBNDS on voluntary work program," is  
7 it your understanding that ICE requires anything  
8 further in terms of its voluntary work program? I'll  
9 clarify.

10 Is your understanding that in addition or  
11 aside from the PBNDS there are further constraints on  
12 what GEO is required to do in its voluntary work  
13 program?

14 A. Well, in the body of this there are. Back at  
15 CLIN 3 I think there is. Do you want me to go through  
16 these?

17 Q. Well, no. Let me clarify and make it easier  
18 for you. I'm interested in knowing about other  
19 standards. So I can read the four paragraphs myself.  
20 But are there other standards that GEO is required to  
21 comply with?

22 MR. DONOHUE: Object to the form.

23 A. Well, I mean, for the kitchen work there are  
24 detainees working in the kitchen who must comply with  
25 the medical and the health standards applicable to the





1 kitchen.

2 Q. And why is that?

3 A. I've seen that in -- I can't remember where  
4 I've seen that in the documents. But if we go -- maybe  
5 it's in the pens, but I know there are standards with  
6 regard to medical and health and safety in the kitchen.  
7 And I know there are security requirements with regard  
8 to where they can work, and that those are in, I  
9 believe, in references.

10 Q. So the last sentence of this first paragraph  
11 where it says "The detainee work program shall not  
12 conflict with any other requirements of the contract  
13 and must comply with all applicable laws and  
14 regulations." Does this help with our discussion  
15 earlier about what happens if GEO had more participants  
16 and went over the amount and ICE refused to reimburse?  
17 I'm just trying to give you context here because I  
18 think the outcome of that discussion was we don't know  
19 if they are required to operate the voluntary work  
20 program or not. Does this help clarify your thinking  
21 on that issue?

22 MR. DONOHUE: Object to the form.

23 A. No, it doesn't.

24 Q. So if GEO were to expend more than the  
25 \$114,000 amount and ICE denied a request for a higher



1 reimbursement, I think you said that you were not  
2 certain if GEO would have to keep operating the work  
3 program. Would that be a conflict in terms of two  
4 contractual provisions?

5 MR. DONOHUE: Object to the form.

6 A. I mean, it could be that the detainee work  
7 program shall not conflict with the \$114,000 not to  
8 exceed, in which case the 114,000 not-to-exceed rules  
9 in the detainee work program is managed so that it  
10 doesn't conflict with that ceiling.

11 Q. So we've mentioned a few times modifications  
12 to the contract. Can you walk me through briefly what  
13 the process for obtaining a contract modification is?

14 MR. DONOHUE: In the industry or for  
15 this one?

16 MR. POLOZOLA: To the extent they're  
17 different, both.

18 A. Well, let me take two examples, and one is  
19 straightforward and the other is less so. The first  
20 example would be -- and this is general to the  
21 industry, and I don't know why it would be different  
22 here, but I'm talking generally. And that is there is  
23 kind of a noncontroversial mod, and it might be  
24 something like the fuel cost that we talked about  
25 earlier where the contractor -- fuel prices go up or



1 they need to make more trips in the vehicles than they  
2 had anticipated. And so as the fuel costs -- and so it  
3 appears as if GEO is going to exceed the not-to-exceed  
4 limit on fuel cost. And GEO goes to the ICE COR and  
5 the COR says, I understand. Continue to send me your  
6 receipts. I'm going to mod the contract to increase  
7 that not to exceed. That's a noncontroversial, kind of  
8 straightforward one.

9 Another one might be more of what's called a  
10 constructive change, and that is often, somehow the  
11 parties disagree about whether this was a change to the  
12 contract. So maybe in this circumstance ICE believes  
13 that this is something covered by the statement of  
14 work, by the performance of work statement that GEO is  
15 obligated to perform. And GEO believes that it is not  
16 covered by the performance work statement, that it is  
17 something that GEO should be compensated for. And so  
18 then in those circumstances sometimes there is a  
19 request for equitable adjustment or a modification. A  
20 request for equitable adjustment is a type of a  
21 modification. And the parties negotiate -- in the  
22 extremes they actually litigate over these REAs, but  
23 they negotiate and come to terms on them.

24 MR. DONOHUE: Can we take a break when  
25 you get a chance?



1 MR. POLOZOLA: Sure.

2 [A brief recess was taken.]

3 Q. So we were discussing contract modifications  
4 before the break, and I want to follow up. Are you  
5 aware of whether GEO has proposed modifications to this  
6 contract regarding repayment of detainee wages?

7 A. Am I aware if there were any?

8 Q. If GEO has requested a modification to the  
9 contract with regard to CLIN 3 payment of detainee  
10 wages.

11 A. I think I remember a reference to that in one  
12 of the deposition transcripts.

13 Q. What was the reference that you're thinking  
14 of?

15 A. I think Ryan Kimble made a reference to it,  
16 but it could have been Bill McHatton. I don't  
17 remember.

18 Q. So I take it based on that you don't recall  
19 the outcome of that request?

20 A. I don't recall the outcome, no.

21 Q. Could GEO request a modification to CLIN 3 to  
22 pay detainees more than \$1 per day?

23 MR. DONOHUE: Object to the form.

24 A. I know of no limitations on GEO to request a  
25 change to the contract. It might be denied, but I know



1 of no limitation on GEO to make the request.

2 Q. Okay. We're going to grab an exhibit that was  
3 previously marked as Exhibit 188.

4 MR. POLOZOLA: For the record it's  
5 GEO-State 046233 [handing.]

6 A. [Witness reviews document.]

7 Q. [By Mr. Polozola] So you can have as much time  
8 as you need, but I'll just ask, have you seen this  
9 document before?

10 A. I don't believe so.

11 Q. And have you seen a document of this nature  
12 before, not this specific one but a document like this?

13 MR. DONOHUE: Object to the form.

14 A. Yeah. I've seen lots of letters like this  
15 asking for a contract mod or a request for equitable  
16 adjustment.

17 Q. Okay. So the subject line in this document is  
18 "Request for equitable adjustment," and it lists the  
19 contract number Northwest Detention Center. Is this a  
20 standard request for modification of the sort you were  
21 discussing earlier, or is this different from what you  
22 were envisioning?

23 A. I've seen ones like this. This is on the  
24 simple side; it's straightforward. I've seen others  
25 that were much more complicated than this. This makes



1 reference to a spreadsheet, and I don't see a  
2 spreadsheet. It makes reference, "attached is the  
3 spreadsheet detailing the estimated increase associated  
4 with . . ." And then it looks like a couple of maybe  
5 invoices, but -- so this may not -- there may be more  
6 that was attached to the letter than is actually  
7 attached here.

8 Q. Okay.

9 A. But that may not relate to your question.

10 Q. That's fine. I think you said earlier there  
11 are noncontroversial and controversial requests for  
12 modification. Is this a noncontroversial modification  
13 based on your experience?

14 A. It is simple and easy to check the math and  
15 check the contract to see if you agree that they should  
16 get an increase or should not get an increase. So this  
17 would be -- my initial reaction is this would be  
18 noncontroversial. I'm not saying it would be awarded  
19 but it would be noncontroversial.

20 Q. So are you aware of whether this modification  
21 was awarded? I suspect I know the answer but I'll ask  
22 anyway.

23 A. I don't know if it was awarded.

24 Q. So if you can briefly turn back to the  
25 solicitation, Exhibit 198.



1 A. Any particular page?

2 Q. Just the front page. So do you see where it  
3 says in box 4, type of solicitation, sealed bid,  
4 negotiated (RFP)?

5 A. I do.

6 Q. What's the difference between a sealed bid and  
7 a negotiated RFP?

8 A. Well, there are a lot of differences. Let me  
9 keep it at a somewhat high level. In the example I  
10 gave earlier about you getting your kitchen remodeled  
11 and you take the drawings to three different  
12 construction contractors, if you take them and say, I  
13 just want you to give me a price in a sealed envelope,  
14 just give me an envelope with a number on it, that's  
15 your bid. That would be a sealed bid type, and that's  
16 in FAR 14.

17 The negotiated RFP is more what would happen  
18 here where, in the example of having your kitchen  
19 redone, you say to them, No, come back to me with your  
20 full estimate. I want to see a spreadsheet of how much  
21 you plan to incur for lumber and how much you plan to  
22 spend for the sink and how much you plan to spend for  
23 each and every item. And I'm going to add all that up  
24 and then -- so they respond with that type of  
25 information, and you negotiate on that type of



1 information. You might say back to them, Oh, you're  
2 spending a thousand dollars for the sink, and I think  
3 you can get it for a better price, for \$800. And you  
4 might say, You've got down 100 labor hours and I think  
5 you're going to need 120 labor hours, so it's okay to  
6 increase that. And you make that kind of knit, if you  
7 will. That kind of very detailed negotiation happens,  
8 and it includes profit. And you might say, You've got  
9 down here 15 percent profit, and I think you should do  
10 it for some lower profit rate, or something like that.

11 But the sealed bid was very simple. A sealed  
12 bid, you think about a sealed envelope here with a  
13 number on it. That's all you get. Does that make  
14 sense?

15 Q. I think so. Sounds like negotiated means it's  
16 negotiated.

17 A. I'll just add with a lot of detailed cost  
18 information. So you can negotiate direct labor,  
19 indirect labor, you can negotiate profit, you can  
20 negotiate labor hours, you can negotiate material  
21 costs, fuel costs. You can negotiate lots of different  
22 details.

23 Q. Okay. Are there limitations on what you can  
24 negotiate?

25 MR. DONOHUE: Object to the form.





1           A. That's kind of broad, but I'll take a stab at  
2 it. I mean, the parties have to come to terms. So if  
3 they negotiate and they don't come to terms, that's a  
4 limitation. So if you want a contract with this party  
5 and they find some term that you're proposing  
6 unacceptable, well, that's a limitation. Hope that  
7 answers your question.

8           Q. Okay. So in a negotiated RFP, what is the  
9 contractor or the proposed contractor required to  
10 submit in its proposal? Just to help me understand at  
11 a high level.

12           A. Well, I mean, and typically there is, like,  
13 three volumes or three things that must be addressed,  
14 and that's technical, cost, and past performance. And  
15 the technical is a narrative explaining the  
16 qualifications of the company to do the work, why  
17 they're a good company and their approach to solving a  
18 problem, and that's where the contractor demonstrates  
19 that they know how to do this work and that they are  
20 reliable and that sort of thing. And then the cost is  
21 what I referred to earlier, it's the final proposal  
22 revision, it's a spreadsheet with a lot of tabs and  
23 it's got all this cost built up. So by CLIN 1 you can  
24 see how many hours the estimated number of trips that  
25 the fuel cost is based on and then estimated number of



1 hours. Typically the estimated number of detainee --  
2 some kind of estimate for the detainee shifts that will  
3 be worked.

4           So I covered technical, cost, and then past  
5 performance, where you -- things like the CPAR's  
6 rating, that's contractor performance assessment  
7 report, I think. And it's when a government, like on  
8 this contract, the subject contract, if ICE was not  
9 satisfied with GEO's performance, ICE could enter a  
10 negative CPAR rating on GEO, and then GEO would have a  
11 harder time getting the next contract or any contract  
12 with the government. Because a government buyer, when  
13 they are interested in the past performance of GEO,  
14 they would look up their CPAR rating and say, Oh, it's  
15 negative. ICE had a negative experience with them.  
16 And so they have a harder time getting other contracts.  
17 So that's kind of the three categories that go into  
18 that. The parties then negotiate based on that.

19           Q. So in the volume 3, I think you said past  
20 performance. But is a contractor to submit a cost and  
21 price proposal?

22           A. I mean, they're required to respond to the  
23 solicitation, and the solicitation typically requires  
24 cost, price, and past performance.

25           Q. And did GEO submit those three things in this



1 case?

2 A. They definitely submitted technical, you know,  
3 the narrative, and cost. I don't remember seeing the  
4 past performance. And maybe it just wasn't in the  
5 documents or maybe I missed it in my review because it  
6 wasn't so relevant to me.

7 Q. So I'm looking at your report on page 5, the  
8 last paragraph here. And you state when discussing the  
9 competitive bidding process, "A significant amount of  
10 information relating to historical costs, basis of  
11 estimates, and forecasted costs may be requested and  
12 disclosed either as part of a proposal or during the  
13 Government's proposal evaluation process." I want to  
14 understand in this case, are you aware of whether  
15 historical costs were requested, were provided?

16 A. It would be atypical in a case like this,  
17 well, somewhat atypical, for ICE to ask for  
18 historical -- strike that. I don't know if historical  
19 costs were provided.

20 Q. So I believe you said earlier you reviewed a  
21 spreadsheet with pricing information in it. So that is  
22 document 229681, and this was cited in your appendix 3  
23 under item number 4 as part of the GEO final proposal  
24 revision.

25 A. If you say so.



1 Q. You're free to confirm. It's appendix 3.

2 MR. DONOHUE: Are you marking this?

3 MR. POLOZOLA: Yes. Good call.

4 [Exhibit No. 199 was marked for identification.]

5 MR. DONOHUE: So for the record this is  
6 Exhibit 199, a binder labeled State of Washington  
7 versus The GEO Group Inc., and it has on the cover page  
8 GEO-state 229681 and marked confidential. And the  
9 binder has several tabs of information.

10 MR. FREE: Is there a Bates range?

11 MR. POLOZOLA: It was printed natively  
12 so the Bates number is the cover page.

13 A. This had to be a huge challenge to print.  
14 This is the type of thing that is much easier to review  
15 on a computer screen where you can expand it or extract  
16 it or move the cell around.

17 Q. [By Mr. Polozola] We at least gave you large  
18 pieces of paper.

19 A. Yes. And I'm not complaining. I'm just  
20 saying that people often don't print them because they  
21 are so hard to print. There is also information in the  
22 cells that we can't see here. I mean, there are  
23 formulas in a lot of these cells, most of these cells,  
24 and we can't see them in this, but in Excel you can see  
25 those. Your questions may not go to those formulas.



1 Q. So just as a starting point, is this the  
2 document that you were referring to where you said you  
3 reviewed an Excel file?

4 A. It appears to be.

5 Q. Okay. Is this information that was provided  
6 as part of GEO's proposal to ICE?

7 A. You said it was in my appendix. Do you  
8 remember is this the fourth item in my appendix?

9 Q. I believe so. This is the Bates number,  
10 229681.

11 A. Got it. So it's my understanding that GEO  
12 submitted a proposal in response to the solicitation.  
13 And time passed, and there was likely negotiations that  
14 went back and forth between the parties, the ENs, which  
15 is an information exchange between ICE and the  
16 offerers, the bidders. And then after that happened,  
17 GEO submitted a final proposal revision, and that this  
18 was part of that final proposal revision is my  
19 understanding.

20 Q. Okay. Did you review all of those documents?

21 A. No, I did not.

22 Q. Is there a reason that you did not review  
23 those documents?

24 A. The initial proposal or each iteration?

25 Q. Each iteration involved.



1 A. I didn't see the necessity.

2 Q. Okay. And why do you believe they were not  
3 necessary?

4 A. Well, we could go back to what I expressed  
5 opinions on early in my report, if you'd like. But I  
6 didn't see it as necessary for the analysis, what I was  
7 investigating.

8 Q. So how do you know they were not necessary if  
9 you didn't review them?

10 A. Well, the highest level expression of what I  
11 was retained for is on page 1, first paragraph, second  
12 sentence. "Kenrich was retained to perform an  
13 independent and objective analysis of the Government  
14 contracts that are the subject of the dispute -- GEO's  
15 Federal Government contracts for a detention facility  
16 in support of US Immigration and Customs Enforcement  
17 (ICE) Seattle Field Office." That makes reference to  
18 the contracts. And the issues related to the contracts  
19 primarily relate to the amount to be paid primarily --  
20 partially relate to the amount to be paid under the  
21 voluntary work program. And that is covered in the  
22 contract and the solicitation. And for that reason, I  
23 didn't feel like the proposals were where it was  
24 necessary for me to see every iteration of the  
25 proposals.



1 Q. But if I'm correct, you do cite the final  
2 proposal; is that correct?

3 A. I do, yes.

4 Q. So turning back to this set of spreadsheets,  
5 if you can flip to what would be the first foldout  
6 spreadsheet here, the next half for you.

7 A. So I think it's the tab titled "2-10-year  
8 budget."

9 Q. Okay. So I just want to understand, because  
10 as cited in your appendix, it cites this whole range of  
11 information. So are you familiar with this  
12 spreadsheet?

13 A. I'm somewhat familiar with this spreadsheet.  
14 I mean, I did review it; I didn't review it in super  
15 detail, but I did review it.

16 Q. Okay. So can you summarize at a high level  
17 what's reflected in the spreadsheet?

18 A. Well, the title of this is: The GEO Group  
19 Inc., Tacoma, Washington, 1,575 beds for ICE Northwest  
20 Detention Center. And then it has a series of columns  
21 repeating, and the columns are in groups of three. So  
22 the first three columns relate to CLIN 1A and 1B -- I'm  
23 sorry, the first two sets of three relate to CLINs 1A  
24 and 1B -- no, I take that back. The first three sets  
25 are CLIN 1A and 1B. Then the second set are 1001A and



1 1001B. Then the third set are CLINs 2001A and 2001B.  
2 So it goes by year. So the first three sets are year  
3 one, which is CLIN 0001A and 0001B. Then the second  
4 set of three relates to year two, which is CLINS 1001A  
5 and 1001B, and so on and so forth. And it goes on to  
6 the second page to get all the way out to CLIN 9001A  
7 and 9001B, which is year ten. So those are how the  
8 columns are set up.

9 Down the left side of the page are different  
10 cost categories. And the first half of the page  
11 roughly is labor cost, so it shows non-wage  
12 determination salaries and it's got various categories  
13 under that and a total. And then it's got wage  
14 determination salaries, various categories under that  
15 and the total. And then you sum the two together to  
16 get the total labor cost. And for example, for year  
17 one under CLIN 0001A, the total labor cost is  
18 \$20,768,377.

19 Then the next major category is operational  
20 expenses, and there's 15 or so categories there, rows,  
21 and the total operational expenses sum to 23,183,841  
22 for CLIN 0001A, which is year one. Then it sums the  
23 labor plus the total operational expenses to get a new  
24 total operational expenses of 43,952,218. And then it  
25 adds depreciation, then it has another subtotal, total





1 expenses with depreciation. Then it adds G&A/OH  
2 allocation, and that stands for general and  
3 administrative expense and overhead allocation. And  
4 then it has another subtotal of all the previous cost  
5 categories including the G&A and overhead allocation.

6 Then it adds profit of ten percent and then it  
7 has a total with profit. And then it has another row  
8 for cost of capital, but it's always zero, so it's just  
9 part of their form that they add cost of capital. But  
10 here they don't have a place for cost of capital -- I  
11 mean, they don't have a dollar amount for it; it's just  
12 always zero. Then it appears that they divide the  
13 total cost plus profit they've come to, which is  
14 49,913,401 for CLIN 0001A. They divide that, I  
15 believe, by 1,575 beds, or maybe it's 1,575 beds times  
16 366. They do that division to get, I believe, 115.63.  
17 And I have not checked the math on that. I'm kind of  
18 assuming. So I believe that's the way this works, but  
19 the formulas -- if I just had the spreadsheet I could  
20 show you.

21 Q. I understand. So are you aware of whether  
22 these numbers are derived from historical figures?

23 A. They typically are estimated using a  
24 combination of historical and current information as  
25 well as forecasts of future -- what is expected to



1 happen in the future.

2 Q. And is there a formula underlying this somehow  
3 in terms of historical and forecasts and current, is  
4 one more valuable than the other in putting together a  
5 proposal of this nature?

6 MR. DONOHUE: Object to the form.

7 A. It's hard to say that one is -- there are  
8 formulas in these cells, but I think you're asking a  
9 more general question of how much do you use historical  
10 versus how much do you use current versus how much do  
11 you use a forecast, and that's a judgment call. The  
12 estimating people that put this together typically are  
13 quite skilled in making those judgments, and I don't  
14 know -- with the information I have here, I don't know  
15 how much they favored or how important they thought  
16 historical information was versus current -- like this  
17 wage determination and the wage rates, that's all based  
18 on current and forecasted future information. The  
19 labor hours may be based in some part on historical  
20 information. But how much, I don't know.

21 Q. So did the solicitation in this case require  
22 the provision of historical information for Northwest  
23 Detention -- financial information for Northwest  
24 Detention Center?

25 A. I don't know.



1 Q. Just trying to understand where these numbers  
2 come from. And it sounds to me like it's up to GEO who  
3 puts this proposal together to propose whatever numbers  
4 they want to come up with.

5 A. Well, I mean, I haven't studied the  
6 solicitation with respect to the question you're  
7 asking. I can say something typical but I would have  
8 to go to the solicitation or the proposal to verify it.

9 Q. So what would be typical that you're thinking  
10 of?

11 A. Yeah, that they would submit what's called  
12 cost or pricing data. And so then they would submit  
13 historical cost information -- historical cost and  
14 labor and lots of historical information.

15 Q. And why is this amount of information provided  
16 in a proposal?

17 A. So that the parties can negotiate. Let's say  
18 ICE has a cost analyst that works for ICE, and they  
19 look at CLIN 1A, like ten rows or so from the top, it's  
20 got health insurance amount for CLIN 1A of 170,100.  
21 And so there might be a cost analyst with ICE who can  
22 say, Oh, no, that's way too high, or that's way too  
23 low. They have information on what the health  
24 insurance should cost. And they can negotiate. Then  
25 the cost analyst from ICE could go to GEO and say, Hey,



1 you're proposing way too much for health insurance.  
2 Here is my data on health insurance. It should be a  
3 much smaller number. It's that why do they provide --  
4 I'm answering your question, why do they provide so  
5 much detail. It's so they can have that kind of  
6 detailed negotiation.

7 Q. So it's important to the negotiation process?

8 A. Yes.

9 Q. So down to row 72, the profit line that you  
10 mentioned. Is it common in a government services  
11 contract to have a negotiated profit margin?

12 A. Yes.

13 Q. And how is that number determined?

14 A. Well, there is a section of the FAR, it's  
15 15.404-4, on profit. And it's pages long and it's  
16 direction to the contracting officer on how to  
17 determine the profit rate. And then the HSAR also has,  
18 I believe, more information specific to ICE on how to  
19 develop profit information. And then there's many  
20 different philosophies in the negotiating strategies on  
21 what is the right profit range.

22 Q. So is the negotiated profit rate in the  
23 ICE-GEO contract ten percent?

24 A. It's not ten percent across the board.  
25 There's no profit added to the CLIN 3, for example.



1 There's no profit added to fuel, to the vehicle fuel.  
2 There is no -- there may be other categories where  
3 there is no profit added. I mean, you could go through  
4 these spreadsheets and figure out which ones add profit  
5 and which ones do not.

6 Q. Sure. So on the ten percent number, is that  
7 an industry standard number for these CLINs, CLINs 1A  
8 and 1B, identified here?

9 MR. DONOHUE: Object to the form.

10 A. It is not an industry standard number.

11 Q. So for each -- well, there is non-wage  
12 determination salaries, wage determination salaries,  
13 and operational expenses, correct?

14 A. Yes.

15 Q. So these are expenses that GEO expects to  
16 incur in providing services under the contract?

17 A. That is correct.

18 Q. So once the contract is agreed upon or  
19 awarded, if those costs go up, does GEO, for lack of a  
20 better term, eat that cost under the contract?

21 MR. DONOHUE: Object to the form.

22 A. I can't give a yes or no. It depends.

23 Q. How does it depend?

24 A. It depends a lot on the reason for the cost to  
25 increase, and it maybe gets back to the modification



1 and changes.

2 Q. So in effect, if the expense were to go up,  
3 they could request a modification and potentially be  
4 reimbursed for the higher expenses, or ICE could say  
5 no, correct?

6 MR. DONOHUE: Object to the form.

7 A. Yeah. It relates more to the reason for the  
8 cost increase. And if the reason for the cost increase  
9 was ICE telling GEO, We want you to provide some  
10 service that was not covered in the contract, then ICE  
11 is going to more often than not say yes, I agree to  
12 your cost increase. If it is a bid error where, let's  
13 say, there was a formula problem in here and some cost  
14 category was not included in the 49,981,409 at the  
15 bottom, so because of a math error it just wasn't  
16 included there, and then GEO's cost came in, you know,  
17 in accordance with these numbers but higher than the  
18 49,981,409, they likely would not get a price increase  
19 from ICE. So I'm just giving you a couple of examples  
20 as to why it's hard to say in a vacuum, so to speak,  
21 whether they would recover on the cost increase.

22 Q. So now on the flip side of this question. If  
23 GEO's expenses are lower than those identified in this  
24 proposal, does GEO get to keep the benefit of having a  
25 lower expense?



1           A. It depends. If the lower expense was related  
2 to a deductive change order, a partial termination,  
3 something like that, then they typically would not get  
4 to keep that savings. But if it's like the parties  
5 agreed -- let's say the parties negotiated to the  
6 numbers on this page, so the parties agreed that this  
7 is a reasonable estimate, then they kind of log in the  
8 sand and move forward. And then barring some major  
9 change, they live by those prices. And if the  
10 contractor has lower costs, they get the benefit; if  
11 the contractor has higher cost, they have less profit.  
12 But you can't say it's always that case. It's just if  
13 there are significant changes, what I just said is not  
14 true. You can go through the change order process.

15           Q. Okay. So with regard to this proposal, if GEO  
16 makes more than ten percent profit with no change  
17 orders or significant circumstances, is it under any  
18 obligation to notify the government that it's making a  
19 higher profit margin than was proposed in the contract?

20           A. I haven't studied that part of the contract to  
21 know.

22           Q. Well, in terms of what is typical in the  
23 field, is a contractor under any obligation to inform  
24 the government that it has a higher profit margin than  
25 was proposed in the contract?



1 MR. DONOHUE: Object to the form.

2 A. Typically in a fixed-price contract the  
3 parties don't report their cost history after award --  
4 their cost or profit history. Now, that's different  
5 here for the passthrough costs, such as the voluntary  
6 work program and the vehicle fuel; those you're  
7 reporting your cost and you're getting reimbursed your  
8 cost, but no markups. So that's the exception to that.  
9 But for other things, barring significant changes, they  
10 don't exchange cost information after the award. Often  
11 change orders are a significant event and then you  
12 exchange cost information at that point.

13 Q. So just to clarify, when you were discussing  
14 absent significant circumstances, a contract  
15 modification would be required, correct, to change the  
16 party's obligations in terms of what is owed to GEO?

17 MR. DONOHUE: Object to the form.

18 Q. I understand it's kind of a longwinded  
19 question. But I'm trying to understand when you are  
20 referring to absent significant circumstances, in a  
21 situation where there are significant circumstances is  
22 a contract modification required to change the party's  
23 obligation?

24 MR. DONOHUE: Object to the form.

25 A. I need to hear it again.





1 [The question was read back by the reporter.]

2 Q. I can ask it more directly if you would like.

3 A. Yes.

4 Q. Okay. Do the parties have to live with the  
5 terms of the contract absent the contract modification?

6 MR. DONOHUE: Object to the form.

7 A. Both parties can change the contract. And I'm  
8 not talking about just a formal change, like a mod to  
9 the contract, the paper document. The government, ICE,  
10 can impose changes on the contractor, and sometimes  
11 they don't realize they're doing it. They just  
12 misinterpret or they interpret the contract differently  
13 as to thinking that the contractor has to do something,  
14 that this is included in their scope of work, and the  
15 contractor disagrees. And so the government in that  
16 instance just barrels ahead saying you must do XYZ.  
17 And the contractor typically has to continue performing  
18 and then ask for this equitable adjustment.

19 So you're talking about -- and there's also  
20 force majeure, just changes outside the control of the  
21 parties. So I don't have a succinct answer yes or no  
22 to that. I mean, if both parties -- often both parties  
23 don't live precisely to the contract. They require  
24 things, ask for things, influence to get things that  
25 are not precisely in the contract, but they are not



1 important enough for the parties to go through the mod  
2 process.

3 Q. So going back to the beginning of this  
4 solicitation process here. In your report you have a  
5 sentence that refers to individual contractors not  
6 having the discretion to propose on some solicitation  
7 requirements while declining to propose on others?

8 A. Which page are you on?

9 Q. I believe it's page 7.

10 A. Yes, page 7 in the paragraph after 11.

11 Q. So is it the case that contractors -- that  
12 solicitations are kind of a take-it-or-leave-it  
13 process? Is that what you're suggesting here?

14 A. Just that it's more or less -- more or less,  
15 yes. It's rare, especially when you have a series of  
16 contracts like this. It's rare to -- if the contractor  
17 ignores or doesn't -- if the contractor ignores some  
18 part of the solicitation, they are deemed nonresponsive  
19 is often the case.

20 Q. Okay. So GEO can propose different prices for  
21 the requested services, though, correct?

22 A. I mean, there are -- in the solicitation where  
23 ICE is asking for what's your price, yes, they can put  
24 in that price. In the solicitation where ICE says this  
25 is the price, if they came back with a different price,



1 I think that would be a -- they would be nonresponsive.  
2 If they proposed something different than they were  
3 directed to propose, that would be nonresponsive -- I  
4 mean typically.

5 Q. Okay. So for CLIN 3 is the implication of  
6 your answer that GEO was unable to propose a different  
7 amount than what was identified in the solicitation?

8 MR. DONOHUE: Object to the form.

9 A. The typical process would be if GEO-- to say  
10 something different than the solicitation said with  
11 regard to CLIN 3 would be nonresponsive. And so  
12 typically they would be omitted from the bidding at  
13 that point, or there would be some maybe had such a  
14 blatant error, ICE would say, Hey, you made a mistake.  
15 You want to resubmit.

16 MR. POLOZOLA: I need a quick break.

17 [A brief recess was taken.]

18 Q. [By Mr. Polozola] So we've discussed a few  
19 times today the PBNDs. And I think we discussed this  
20 earlier, but I want to make sure. Is it your  
21 understanding that GEO is required to comply with the  
22 PBNDs under the terms of the contract?

23 MR. DONOHUE: Object to the form.

24 A. I would need to look back at that.

25 Q. You're looking at the contract?



1           A. Yes, I am. I mean, the more precise statement  
2 is in the contract, page 82, which is GEO-State 036906  
3 under: Manage a Detainee Work Program. "Detainee labor  
4 shall be used in accordance with the detainee work plan  
5 developed by the Contractor and will adhere to the ICE  
6 PBNDS on Voluntary Work Program." So that's more  
7 narrow than what you said, but I think that's the  
8 relevant statement.

9           Q. Okay. Just reading your report here, just so  
10 we are clear. On page 8 of your report, you quote the  
11 final proposal revision as saying "The NWDC will  
12 develop a comprehensive volunteer detainee work program  
13 which complies with PBNDS 2011." Did I read that  
14 incorrectly?

15          A. You did not read it incorrectly.

16          Q. Okay. So what are the PBNDS?

17          A. Well, it's the ICE document. Stands for the  
18 performance-based national detention standard. And it  
19 has a section on voluntary work programs as well as  
20 many other sections. It was -- the relevant version  
21 was authored in 2011, I believe, and then updated in  
22 2016 and has the updates shown in the document.

23          Q. I'm going to hand you a document cited in your  
24 appendix 3 as document 8, which is a copy of the PBNDS  
25 that you relied upon to my understanding.



1 [Exhibit No. 200 was marked for identification.]

2 MR. FREE: Do you have the Bates range?

3 MR. POLOZOLA: Yes. It's GEO-State  
4 000001 through 3, then it skips to GEO-State 000385  
5 through 389.

6 MR. DONOHUE: Do you have another copy  
7 of that?

8 MR. POLOZOLA: Yes [handing].

9 MS. BRENNEKE: I was going to say, PBND  
10 2011 has been introduced as an exhibit before, but not  
11 in the exact same format, so that's why we're  
12 redesignating it.

13 Q. [By Mr. Polozola] Yeah. To be clear, these  
14 are the Bates pages that were identified in appendix 3  
15 of your report, Mr. Bingham, which is why we're  
16 providing them in this format. Are you familiar this  
17 document?

18 A. I am, yes.

19 Q. You reviewed this document in preparing your  
20 report?

21 A. I did.

22 Q. So if I can direct your attention to Bates no.  
23 000385, is this the section of the PBND on the  
24 voluntary work program?

25 A. It is, yes.



1 Q. And under section 2, does number 5 state  
2 "Detainee work conditions shall comply with all  
3 applicable federal, state and local work safety laws  
4 and regulations?"

5 A. It does.

6 Q. So does this require GEO to comply with all  
7 applicable federal, state and local work safety laws  
8 and regulations under the terms of the contract?

9 MR. DONOHUE: Object to the form.

10 A. Do you want me to interpret this?

11 Q. Well, I'm asking if under the contract, which  
12 I believe you said in your report GEO must comply with  
13 the PBNDS 2011?

14 A. With respect to the voluntary work program.

15 Q. Okay. So now we are in that section of the  
16 PBNDS 2011, correct?

17 A. Yes, we are.

18 Q. So is GEO required to make sure that detainee  
19 working conditions comply with all applicable federal,  
20 state and local safety laws and regulations?

21 A. It appears yes. That's a fair reading of  
22 this.

23 Q. Okay. So we move on to Bates no. 000387.

24 A. I'm on that page.

25 Q. Do you see the section K on compensation?



1 A. I do.

2 Q. What compensation is required under that  
3 section for detainees in the voluntary work program?

4 MR. DONOHUE: Object to the form.

5 A. The second paragraph reads "The compensation  
6 is at least \$1 USD per day. The facility shall have an  
7 established system that ensures detainees receive the  
8 pay owed them before being transferred or released.

9 Q. So under this provision of the PBNDs could GEO  
10 pay detainees more than \$1 per day for participation in  
11 the voluntary work program?

12 MR. DONOHUE: Object to the form.

13 A. Well, I mean, this is an ICE program. So if  
14 GEO asked for -- if ICE directed GEO to pay something  
15 different than a dollar per day then GEO could do that  
16 in accordance with the contract if the contract -- if  
17 they got that direction from ICE.

18 Q. Would GEO need direction from ICE to ask for  
19 that?

20 MR. DONOHUE: Object to the form.

21 A. Yes.

22 Q. So GEO could not go to ICE and ask to pay  
23 detainees more than \$1 per day? Am I understanding  
24 that correctly?

25 A. Oh, I think GEO, if it wanted to, could go to



1 ICE and say, I would like you to mod CLIN 3 to say  
2 something different than CLIN 3 currently says.

3 Q. Would that be consistent with this provision  
4 of the PBNDS?

5 MR. DONOHUE: Object to the form.

6 A. Well, I just said that they could go to ICE  
7 and say, we would like to modify CLIN 3 in any -- and  
8 I'm just directing in any way -- to increase the price,  
9 to reduce its actual cost. To increase the actual  
10 cost, reduce the actual cost, they could ask for any --  
11 I don't know why they would, but you're asking is it  
12 theoretically possible? It is theoretically possible.

13 Q. So could GEO pay detainees more than \$1 per  
14 day under the PBNDS 2011?

15 MR. DONOHUE: Object to the form.

16 A. I don't think they could under the contract.

17 Q. That wasn't my question. I'm referring to  
18 this section on compensation that we just reviewed.  
19 Does this limit GEO to paying detainees \$1 per day?

20 A. I think the contract limits them to paying  
21 them the actual cost of \$1 per day. This says at least  
22 \$1.

23 Q. Okay. And can we agree that "at least \$1"  
24 means that you could pay more than \$1 under this  
25 section of the PBNDS?





1 MR. DONOHUE: Object to the form.

2 A. This says at least a dollar, but the contract  
3 says actual cost of a dollar, exactly a dollar. I  
4 added the word "exactly," but it says "actual cost of  
5 \$1."

6 Q. So you're not offering any opinion in this  
7 case that the PBNDS requires payment of only \$1 to  
8 detainees in the VWP, correct?

9 A. I don't think it governs on the payment of --  
10 CLIN 3 governs my opinion on the passthrough cost, the  
11 actual cost that shall be paid to the detainees and  
12 reimbursed by ICE.

13 Q. And why doesn't this govern in your view?

14 MR. DONOHUE: Object to the form.

15 A. Well, I mean, CLIN 3 is very clear that it's  
16 exactly a dollar. This can be a dollar or more. So  
17 how do you interpret the contract, and you're asking  
18 for contract interpretation of questions -- I'm giving  
19 that, even though I said in my report, for my purposes  
20 in my report I did not provide contract interpretation.  
21 But I'm doing it now. The way to interpret those  
22 consistently would be exactly \$1. That comports with  
23 CLIN 33 and it comports with PBNDS.

24 Q. So back to the contract modification topic we  
25 discussed a bit earlier. Could GEO as you understand



1 it obtain a contract modification to pay detainees more  
2 than \$1 per day for participation in the VWP and be  
3 consistent with the PBNDS?

4 MR. DONOHUE: Could you read that back.  
5 I'm sorry.

6 [The question was read back by the reporter.]

7 MR. DONOHUE: Object to the form.

8 Q. Do you understand the question?

9 A. I think that I do. I mean, I think we talked  
10 about this. I think it's kind of asked and answered,  
11 although I'll answer it. The contractor can ask to mod  
12 the contract where there's a request to mod any aspect  
13 of the contract. I can't think of an aspect of the  
14 contract that the contractor cannot request a mod.  
15 Now, would the contractor get the mod? Would it be in  
16 the best interest of the contractor or the government  
17 or anybody else to mod? That's a different question.  
18 But can they request to mod the contract? Yes, they  
19 can.

20 Q. We discussed earlier whether GEO was required  
21 to pay only a dollar a day, and I think we have covered  
22 that ground. And correct me if I'm wrong that it's  
23 your position that GEO is required under the contract  
24 to pay only \$1 per day to detainees in the VWP,  
25 correct?



1           A. I'll just add to pay their actual cost of \$1  
2 per day, yes.

3           Q. So does GEO have the option of paying more  
4 than \$1 per day?

5                       MR. DONOHUE: Object to the form.

6           A. Well, not in accordance with the contract. I  
7 mean, can a company break the law, can a company breach  
8 the contract? Yeah, they could breach the contract and  
9 do something different than the contract, and until  
10 they were caught they could pay more. So I'm saying  
11 out in Never Never Land, so to speak, it is impossible,  
12 but not in accordance with the contract.

13          Q. So are you saying that it would be a breach of  
14 the contract to pay more than \$1 a day to detainees in  
15 the VWP?

16          A. Yes.

17          Q. For GEO to pay the detainees. I'm not talking  
18 about GEO submitting reimbursement to ICE for more than  
19 \$1 a day.

20                       MR. DONOHUE: Object to the form.

21          A. It would not be in accordance with the  
22 contract. I think -- I mean, if breach means not in  
23 accordance, I think breach is the right term.

24          Q. So I just want to understand this point about  
25 GEO's ability to pay more to detainees -- a bit more if



1 you'll indulge me. So I understand that GEO can only  
2 be reimbursed for actual cost is your opinion,  
3 correct -- with regard to the detainee work program  
4 wages?

5 A. I'll go further and say they can only be  
6 reimbursed actual cost of \$1 per day per detainee.

7 Q. So if the federal court in this case orders  
8 GEO to pay detainees \$12 or more per hour instead of \$1  
9 a day and GEO complies with that order, would GEO be in  
10 violation of the ICE-GEO contract?

11 MR. DONOHUE: Object to the form.

12 A. I have no -- you're asking a question about  
13 federal law versus a contract, and that would not be in  
14 accordance with the contract. But would it be -- would  
15 it somehow override? I think you're asking -- I don't  
16 have a considered opinion on that.

17 Q. Okay. I'm not asking you to reach a legal  
18 conclusion, to be clear. But it's to this whole series  
19 of questions of can GEO pay detainees more. And the  
20 followup here is if they are told by a court to pay  
21 more, am I understanding you that it would not be in  
22 accordance with the terms of the contract; is that your  
23 testimony?

24 MR. DONOHUE: Object to the form.

25 A. That is what I said, but I also said I have



1 not thought about that, and that sounds complicated.  
2 And I don't have a considered opinion on that. What  
3 I'm struggling with is who wins there, the federal  
4 judge or the contract, you know, ICE or -- I mean,  
5 you've got the executive branch versus the judicial  
6 branch, I'm sure that's -- well . . .

7 Q. Fair to dsy that's not your domain?

8 A. That's not my domain.

9 [Exhibit No. 201 was marked for identification.]

10 Q. So I've handed you what's been marked as  
11 Exhibit 201.

12 MR. POLOZOLA: And I'll state for the  
13 record that this is a copy of the GEO Group's responses  
14 to Washington's second set of requests for admissions.

15 Q. [By Mr. Polozola] And because you are not a  
16 lawyer, I can give you a brief explanation of what this  
17 document is. The state has asked GEO to admit to  
18 certain facts, and GEO provided written responses.  
19 Have you reviewed this document before?

20 A. I have not.

21 Q. Have you discussed this document with anyone  
22 before?

23 A. I don't know the content of this document. I  
24 may have discussed some of the content, I don't know.  
25 But I haven't discussed this document.



1 Q. And so directing your attention to RFA 67 and  
2 I'll find you the page.

3 MR. DONOHUE: Page 21.

4 MR. POLOZOLA: Thank you.

5 Q. [By Mr. Polozola] So the request for admission  
6 no. 67 says, "Please admit that GEO has the option to  
7 pay more than \$1 a day to detainee workers for work  
8 performed in the VWP at the NWDC." And the response is  
9 "Admit." Is your testimony consistent with GEO's  
10 position in this case --

11 MR. DONOHUE: Object to the form.

12 Q. -- as stated in RFP 67?

13 A. What I said is not consistent with RFA 67.

14 Q. Does this modify or cause you to want --  
15 excuse me. Having viewed this, does this modify any of  
16 the opinions you hold in this case?

17 A. No.

18 Q. Okay. So looking at page 10 of your report  
19 here, second full paragraph, where you're discussing  
20 passthrough costs. And there are two sentences here  
21 about costs associated with administering the voluntary  
22 work program. So the last sentence here says "All  
23 costs GEO expected to incur in administering the  
24 Voluntary Work Program had to be factored into the  
25 fixed prices included in the CLINs."



1           A. Where are you again? In the second full  
2 paragraph?

3           Q. Last sentence of the second full paragraph.

4           A. Okay. I see that.

5           Q. So what costs, as you understand it, is GEO  
6 expected to incur in administering the VWP aside from  
7 detainee wages?

8           A. So the cost of administration of the  
9 voluntarily work program would include things like the  
10 people who have to classify, have to accept  
11 applications from the detainees, determine -- well,  
12 enter into the agreement with the detainees with regard  
13 to the work, the scope, which includes that they will  
14 be paid a dollar a day, and then maintaining a list of  
15 who has volunteered in what areas. And then as  
16 openings become available, keeping track of that so  
17 they can add them to that area or get them to work in  
18 that area. Dealing with someone, a detainee who is  
19 scheduled to work and who leaves during the shift or  
20 leaves just before the shift says I don't want to work,  
21 then reacting to that and getting the next person on  
22 the list into that slot to work that day, those are all  
23 administration costs, as well as tracking the shifts  
24 worked by the detainees in the different areas and then  
25 invoicing those and then adding to the detainee



1 accounts, electronic accounts, the amounts that they  
2 get, the dollar a day that they get, adding those.  
3 Those are all necessary work, as well as whoever does  
4 all those things have fringe benefits. They have their  
5 salaries, they have their fringe benefits, they have  
6 some amount of overhead, they have office space -- a  
7 computer, they have to use office space -- all those  
8 types of things have costs as well. So those are the  
9 types of costs I had in mind when I was talking about  
10 this administrating of the voluntary work program.

11 Q. Okay. And which line item? Since we've been  
12 discussing line items today, where are those costs  
13 reflected in the line item portion of the contract?

14 A. And you're thinking about the binder we looked  
15 at in the final proposal revision?

16 Q. No. Let's pause, but thank you for the  
17 clarification. I'm actually thinking about the  
18 contract itself where you have CLIN 1, CLIN 2, CLIN 3.  
19 Where are those costs encapsulated in the contract?

20 A. Well, so to me, in my accounting world, that's  
21 a misnomer. That's a contract and it's how you're  
22 going to be reimbursed. But how the contractor  
23 accounts for cost can be very different than that, and  
24 that's why I'm having trouble answering that. You've  
25 asked -- I think, when GEO incurs those costs, where do





1 they record them is the way I'm interpreting your  
2 question.

3 Q. So what's the answer to that?

4 A. Well, they don't record them to CLIN 1, 2, or  
5 3. They don't record them that way. The way they  
6 record them won't correspond to CLIN 1, 2, 3 like that,  
7 I doubt. I mean, I don't know where they record it,  
8 but they typically would not categorize it by CLINs  
9 like that.

10 Q. Okay. So fair to say that there is no line  
11 item that specifically reflects the costs of  
12 administering the VWP?

13 A. No. There are likely multiple line items in  
14 their cost ledger, their accounting cost ledger.  
15 There's probably multiple accounts that reflect the  
16 cost of administering the voluntary work program.

17 Q. But in terms of the contract, there is no --  
18 that's what I'm getting at. Is there a line item in  
19 the contract that reflects those costs of administering  
20 the VWP?

21 A. And that's where -- I can't answer that.  
22 That's to me -- I can't answer that.

23 Q. Okay. So let's think about it a different  
24 way, how I think about it. If the costs of  
25 administering the VWP go up, is that a passthrough cost



1 that GEO will be reimbursed for?

2 A. I believe the answer to that is no. To my  
3 knowledge, the only passthrough costs are the dollar a  
4 day to detainees in the voluntary work program and the  
5 vehicle fuel costs. Those are the only passthrough  
6 costs, and those by definition, passthrough, you can't  
7 add anything to them. It's just you got a receipt for  
8 fuel from the gas station, that's how much you get  
9 reimbursed. You've got a record that you paid a  
10 detainee a dollar, that's what you get reimbursed.  
11 There's no addition to that.

12 Q. No markup?

13 A. Yeah, no markup. Correct.

14 Q. Okay. Moving on to another kind of bucket of  
15 your report where you discuss ICE's oversight of GEO's  
16 program administration. And I mean, you discuss the  
17 fact in your review that ICE has not rejected any  
18 charges is unallowable or unacceptable. And I want to  
19 understand the basis for that position. Did you speak  
20 with Mr. Brian Hill, Mr. Hill?

21 A. Chuck Hill.

22 Q. Chuck Hill. Did you discuss that topic with  
23 Mr. Hill?

24 A. I believe I did, but I can tell you in just a  
25 moment. [Witness reviews document.]



1 I'm not finding it, but I believe it says in  
2 here that I did learn that there had been no compliance  
3 issues with regard to the voluntary work program and  
4 no, like, reductions in invoices related to that, and  
5 no -- there's a form that they have to submit, a kind  
6 of a complaint form that ICE would create. So I'm  
7 focused on page 14, the bottom of page 14, top of page  
8 15. The last sentence going off the bottom of page 14  
9 says "ICE's annual inspections consistently rated GEO's  
10 Voluntary Work Program at NWDC as 'meets standards,'  
11 and many included a note in the remarks section  
12 confirming that detainees were paid \$1 per day."  
13 That's one of the things that I confirmed in my  
14 interview.

15 Q. And how many of those documents did you  
16 review?

17 A. How many of the --

18 Q. The inspection work sheets that were referred  
19 to in that sentence.

20 A. A handful, not many -- like two or four.

21 Q. Were they all included in appendix 3 of your  
22 report?

23 A. I think I only included one, the one that I  
24 cited here.

25 Q. So is that the extent of your confirmation in



1 support of that statement you just read back?

2 A. Yes. The ones that I reviewed and the  
3 interview with Mr. Hill.

4 Q. Okay. So when the -- is it the contracting  
5 officer or the contracting officer representative who  
6 reviews invoices that GEO submits to ICE?

7 A. Typically the COR.

8 Q. Okay. And when that person is reviewing the  
9 invoices, are they simply reviewing to determine  
10 whether the amounts invoiced are in accord with what  
11 the contract requires?

12 MR. DONOHUE: Object to the form.

13 A. I don't remember seeing on the record how the  
14 COR does that in this case. I can talk about how they  
15 typically do it, but I can't say that I've seen  
16 evidence here about what kind of review the COR here  
17 does.

18 Q. And how do they typically do it?

19 A. Typically they do a risk assessment, and if  
20 they consider the contractor more risky, they do a much  
21 more detailed review of the invoices. And if they  
22 don't consider them risky, they might just check the  
23 math. They might just check the rate, like per  
24 detainee per day rate multiplied by the number of days  
25 and beds in the month. There's a formula there, the



1 detainee bed rate times the number of detainees times  
2 the number of days in the month, a monthly invoice, to  
3 get you the amount for that CLIN 1A and 1B which have  
4 similar formulas. They might sit there with a  
5 calculator and check that the math is right and that  
6 the per detainee per bed dollar amount is the amount  
7 listed in the contract. They might just do something  
8 as simple as that.

9 But if they consider them riskier, they might  
10 go further and try to test and audit the amount, the  
11 number of bed days that are in that formula, and they  
12 assess the risk based on the amount of activity. And  
13 so they've got the annual audits by ICE, they have the  
14 internal audits that they do -- well, internal audits  
15 are done by GEO, but they likely share the results with  
16 ICE, with their customer. But there are those various  
17 types of audits. And if they tend to do well with  
18 those audits, then the typical COR won't feel like they  
19 need to check much on the invoice because they kind of  
20 trust all the systems in place at the contractor.  
21 Anyway, it's a long answer.

22 Q. I think I got it all.

23 MR. POLOZOLA: Can we break for a bit?

24 [A brief recess was taken.]

25 Q. [By Mr. Polozola] Okay. Thanks for taking a



1 break. I appreciate it. So in the course of the  
2 solicitation process leading up to the 2015 contract,  
3 how many other bidders were there?

4 A. I don't know.

5 Q. Did you discuss that question with anyone or  
6 attempt to find out the answer?

7 A. I discussed that question and I may have known  
8 in September of '18 when we were first looking at this.  
9 I think I did know but I don't remember now. It may  
10 have been three, but don't hold me to that. I don't  
11 remember the number. I didn't feel it was relevant,  
12 that's why I didn't put it in the report.

13 Q. Are you aware of other contractors who could  
14 provide similar services to those provided under this  
15 contract aside from GEO?

16 A. I think there's two others. I don't remember  
17 their names right now.

18 Q. Okay. So early in the day you mentioned that  
19 you --

20 A. Well, let me amend my answer. I think there  
21 are two others that currently offer these types of  
22 services. There's many companies that could provide  
23 it, but I think the companies that list that this is a  
24 scope of work that they do a lot of, I think there's a  
25 total of three, if memory serves.



1 Q. Okay. Earlier in the day we discussed  
2 documents that you reviewed to prepare for your  
3 deposition. So I will show you what we can mark as  
4 Exhibit 202.

5 [Exhibit No. 202 was marked for identification.]

6 MR. POLOZOLA: 00270461, that's the  
7 Bates range for Exhibit 202. The full range is through  
8 00270648.

9 Q. [By Mr. Polozola] Are you familiar with this  
10 document?

11 A. Yes.

12 Q. What is this document?

13 A. It's the award dated -- its effective date is  
14 10-24-09. It's the award of a contract to GEO Group  
15 Inc.

16 Q. For what?

17 A. I believe it's for the Northwest Detention  
18 Center, but I'm just verifying that. Yes, it is.

19 Q. And what are you looking at to verify that --  
20 just so we're clear on the record?

21 A. Just page 12, which is GEO-State 00270474.  
22 And these awards can look similar. I just wanted to  
23 make sure that this was not something different than  
24 what I reviewed, and it appears to be what I reviewed.

25 Q. And is this contract structured in the same



1 way as the 2015 contract with regard to the CLINs that  
2 are identified?

3 A. Well, CLIN 1A and 1B is the same CLIN. CLIN 2  
4 I would have to look at but it looks to be the same.  
5 CLIN 3 is the same. And then it repeats for the other  
6 years -- other options, other years.

7 Q. So this contract has a CLIN 3 just as the 2015  
8 contract?

9 A. Yes, it does.

10 Q. And is your opinion with regard to what's  
11 required by CLIN 3 the same for this contract as for  
12 the 2015 contract?

13 MR. DONOHUE: Object to the form.

14 A. Yes, it is.

15 Q. So just so I'm understanding correctly, under  
16 this contract, under CLIN 3, ICE is required to  
17 reimburse GEO for costs incurred paying detainee wages  
18 in the voluntary work program?

19 A. Yeah. And I'll just read, CLIN 3 "Detainee  
20 volunteer wages for the detainee work program.  
21 Reimbursement for this line item will be at the actual  
22 cost of \$1 per day per detainee. Contractor shall not  
23 exceed the amount shown without prior approval by the  
24 contracting officer."

25 Q. So our conversation earlier with regard to the





1 2015 contract would be the same with regard to this  
2 contract? Or no?

3 MR. DONOHUE: Object to the form.

4 A. I mean, narrowly. I mean, we talked about a  
5 lot with regard to the 2015 contract, and I think  
6 you're focused on the \$1 per day per detainee, the  
7 actual cost of that with respect to the actual cost of  
8 \$1 per day detainee. Yes, my opinions are the same.

9 Q. You thought correctly. So if you can go to  
10 what is page 17 of the PDF. It's Bates no. 00270479.  
11 Okay?

12 A. I'm at that page.

13 Q. Okay. So there is a list of some items here,  
14 and you may need to refer to the page before. This is  
15 section C9, Constraints. And according to this  
16 section, "The following constraints comprised a  
17 statutory regulatory policy and operational  
18 considerations that will impact the contractor." Going  
19 to the last sentence here, it says "Constraints include  
20 but are not limited to," bullet j, "The ICE/DHS PBNDS";  
21 is that correct?

22 A. It does say in C9 that "The following  
23 constraints comprise the statutory regulatory policy  
24 and operational considerations that will impact the  
25 contractor." And then those include j, which is the



1 ICE/DHS performance-based detention standards. So yes,  
2 it does.

3 Q. And for bullet r, "Applicable federal, state  
4 and local labor laws and codes"; is that correct?

5 A. It does say that they have an impact.

6 Q. And in your experience -- or let me pause.  
7 Have you seen contracts that use this type of language,  
8 "constraints that will impact the contractor," in the  
9 past?

10 A. I don't remember this wording. My memory is  
11 of stronger wording than this --

12 Q. Okay.

13 A. -- in other contracts.

14 Q. So is that language that we're looking at on  
15 page 17, is that similar to the language in the 2015  
16 contract?

17 A. It is similar, yes.

18 Q. Is it identical?

19 A. I haven't checked.

20 Q. Okay. So going on to Bates page 00270548.

21 A. I'm on that page.

22 Q. And I'm under the section Manage a Detainee  
23 Work Program, general.

24 A. I see that.

25 Q. Okay. The last line of the first paragraph,



1 this may sound familiar, "The detainee work program  
2 shall not conflict with any other requirements of the  
3 contract and must comply with all applicable laws and  
4 regulations." Did I read that correctly?

5 A. You did read it correctly.

6 Q. Is that the same language that appeared in the  
7 2015 contract?

8 A. I believe it is, yes.

9 Q. So am I -- is it a fair reading of this  
10 statement that the Northwest Detention Center voluntary  
11 worker program must comply with all applicable laws and  
12 regulations?

13 MR. DONOHUE: Object to the form.

14 A. Well, I mean, it says that "the detainee work  
15 program shall not conflict with any other requirements  
16 of the contract." So that could mean that the detainee  
17 work program needs to be modified to make sure that it  
18 doesn't conflict with other requirements in the  
19 contract, and it does say "and must comply with all  
20 applicable laws and regulations." And it doesn't  
21 define what applicable means, but it does have those  
22 words.

23 Q. Okay.

24 [Exhibit No. 203 was marked for identification.]

25 MR. POLOZOLA: So the Bates range for



1 what was marked as Exhibit 203 is GEO-State 00270649  
2 through 00270784. And I believe those are consecutive.

3 Q. [By Mr. Polozola] Do you recognize this  
4 document?

5 A. I do.

6 Q. What is this document?

7 A. This is the award of a contract awarded July  
8 26, 2002, to Correctional Services Corporation.

9 Q. Is this the contract or the award you referred  
10 to earlier in the day as having reviewed to prepare for  
11 your deposition?

12 A. Yes.

13 Q. So what services were to be provided under  
14 this contract?

15 A. Very similar to the other two contracts that  
16 we've discussed, only this included a ramp-up period,  
17 if memory serves, a 240-day ramp-up period before  
18 beginning to provide services.

19 Q. Under this contract is the CLIN structure the  
20 same as the 2015 contract we reviewed?

21 A. It is not.

22 Q. How is it different?

23 A. It's very different. It only has two CLINs.  
24 It does not have a third CLIN. And the first two CLINs  
25 are much simpler and they take a -- whereas in the 2015



1 contract, I think it's CLIN 1, has the amount of bed --  
2 a minimum number of detainees, and then reimbursement  
3 for that at a certain rate. And then if there are a  
4 number of detainees above that amount, a different  
5 rate. And this is simple, just much simpler, just an  
6 estimated quantity at a price. And the transportation  
7 is simpler in that in the later contract it includes a  
8 price for certain vehicles in addition to fuel being a  
9 passthrough cost, and that it includes -- the later one  
10 includes a CLIN 3. And there is no CLIN 3 here; in  
11 other words, there's no payment for the voluntary work  
12 program under this contract.

13 Q. Is it your understanding that there were  
14 detainees who were working at NWDC during the period of  
15 this contract?

16 A. Well, there is a requirement in this contract  
17 to have a voluntary work program.

18 Q. So for costs that were expended to pay the  
19 detainee workers for that program, how were those  
20 billed to ICE under this contract?

21 A. I don't see anywhere where there is  
22 anticipation that the detainees would be paid.

23 Q. Do you know whether they were paid or not?

24 A. I do not know.

25 Q. So there is no line item for reimbursement of



1 detainee wages in this contract?

2 A. I saw no reference to the payment, either the  
3 payment of detainees or for the reimbursement of  
4 payment, so there is no -- just based on this document,  
5 it doesn't appear that detainees were to be paid under  
6 the voluntary work program.

7 Q. Is there any limitation in this contract  
8 that -- well, let me rephrase. Is there any limitation  
9 in this contract with regard to the amounts the  
10 detainees can be paid under the voluntary work program?

11 MR. DONOHUE: Object to the form.

12 A. We would have to go to the paragraph on the  
13 voluntary work program to see if it says anything about  
14 that. I don't remember if there is any limitation.

15 Q. And just as you'll recall we discussed today  
16 whether GEO was required to pay only \$1 to detainee  
17 workers under the VWP under the later contracts, is  
18 there any similar requirement in this contract to your  
19 knowledge?

20 MR. DONOHUE: Object to the form.

21 A. To my knowledge there is no requirement to pay  
22 the detainees anything. And there's no provision for  
23 passthrough.

24 Q. Does this contract require or did this  
25 contract require GEO to comply with state labor laws?



1 A. I don't remember.

2 Q. So turning to Bates number 00270672.

3 A. I'm at that page.

4 Q. Okay. And I'm looking at section H under  
5 "Conflicts." So the first sentence says "All services  
6 and programs must comply with the SOW, and all  
7 applicable state and local laws, regulations and  
8 detainee court orders"; is that correct?

9 A. That is what it says.

10 Q. Is this section part of this contract?

11 A. Yes.

12 Q. So under the section was GEO required to  
13 comply with applicable state and local laws,  
14 regulations and detainee court orders?

15 MR. DONOHUE: Object to the form.

16 A. This reads that "All services and programs  
17 must comply with the statement of work and all  
18 applicable state and local laws, regulations and  
19 detainee court orders."

20 Q. Certainly. So just to clarify, I can read it  
21 and we've read it together a few times. I'm asking  
22 whether in your understanding and your experience of  
23 what these contracts require under this provision is  
24 GEO required to comply with state and local laws?

25 MR. DONOHUE: Object to the form.



1           A. Let me say that in my report I said I was not  
2 interpreting contracts or the regulations, and I'm not.  
3 But I think you're asking me to interpret that, and as  
4 such, just as a layman I suppose, it does appear to say  
5 that.

6           Q. And so the following sentence, "When a  
7 conflict exists" -- excuse me -- "Should a conflict  
8 exist between any of the aforementioned standards, the  
9 most stringent shall apply," is that similar to the  
10 requirement we discussed for the later contracts with  
11 regard to conflicting provisions and how stringent  
12 standards apply?

13                       MR. DONOHUE: Object to the form.

14           A. It is similar. It is certainly similar.

15           Q. Are they identical?

16                       MR. DONOHUE: Same objection.

17           A. I would want to line them up side by side.  
18 The last sentence appears to be identical. The second  
19 one may be identical, but I don't want to say that they  
20 are without checking.

21           Q. So if you can turn to Bates page 00270694.

22           A. I'm at that page.

23           Q. Is this the section you were referring to  
24 earlier when you mentioned the voluntary work program  
25 section of this contract? Or did you have something





1 else in mind?

2 A. This is the section I was thinking about when  
3 I referred earlier, yes.

4 Q. So there is nothing in this provision with  
5 regard to the amounts to be paid to detainees, correct?

6 MR. DONOHUE: Object to the form.

7 A. What is shown here, no. But the last under C1  
8 at the very end, it says "REF Section J, attachment  
9 J-3.13." And I think that would be on the prior page,  
10 which is missing. So the pages jump from C-31 to C-33.  
11 There is a C-32 that's missing.

12 MR. POLOZOLA: So I'll just note for the  
13 record that the Bates pages are consistent, so it  
14 appears that as produced that page is missing.

15 Q. [By Mr. Polozola] So unfortunately I can't  
16 help you on what's on that prior page.

17 A. Yeah. I don't know either. This is an old  
18 document, but there may be reference to payment on that  
19 missing page or there may not. I don't know.

20 Q. Okay. Put that one aside for now. So one  
21 followup question. You mentioned earlier that you  
22 reviewed certain deposition transcripts, and I believe  
23 you mentioned one being the transcript for Ryan  
24 Kimble's deposition.

25 A. Yes.



1 Q. Are you referring to the deposition of Ryan  
2 Kimble as GEO's 30(b)(6) representative?

3 A. Yes.

4 Q. Have you reviewed -- is that the only  
5 deposition transcript from Ryan Kimble that you've  
6 reviewed?

7 A. Yes.

8 Q. Okay. Just wanted to clarify.

9 A few followup questions on modifications  
10 related to wage determinations. I believe we discussed  
11 those earlier. And if I recall, you were  
12 distinguishing between what might be viewed as  
13 controversial versus noncontroversial requests for  
14 modification; is that correct?

15 A. That is correct.

16 Q. So for a request for modification relating to  
17 updated wage payment standards -- well, let me pause.  
18 Do you have an understanding of what I'm referring to  
19 when I say a request for modification related to  
20 updated wage payment standards?

21 A. Yes.

22 Q. And what is that understanding so that we're  
23 clear that we're on the same page?

24 A. That there is a standard wage and that it's --  
25 the contract is to be modified -- in the contract, in



1 the proposal, there were forecasted wages, wage rates  
2 to be paid each year in the future. And the forecasted  
3 wage rates -- if the actual wage rates differed from  
4 what was forecasted, then GEO could request a  
5 modification related to that.

6 Q. So is that the Department of Labor wage  
7 determinations?

8 A. Yes, I believe so.

9 Q. I just want to be clear that we are referring  
10 to the same thing.

11 A. My understanding is that relates to employees.

12 Q. So you have a copy of the contract, I believe,  
13 somewhere in the bottom of your stack.

14 A. So what page?

15 Q. I'm looking at GEO-State 036980. There are a  
16 number of similar schedules.

17 A. I'm on the page you referenced.

18 Q. Okay. And the only question is, is this an  
19 example of the wage determination schedules that we  
20 were just discussing?

21 A. Yeah. I mean, this one is dated, the date of  
22 revision on the upper right of 7-25-14, and then there  
23 would be presumably later ones that would come out that  
24 would be -- that would affect, like, option year 1,  
25 option year 2, option year 3.



1 Q. So when the revised determinations come out,  
2 would it be typical that a contractor would request a  
3 contract modification to update prices reflected in the  
4 contract to account for the higher wages?

5 A. For some types of contracts, for contracts  
6 like this, yeah, that's not uncommon.

7 Q. Okay. So taking this back to controversial  
8 versus noncontroversial, would that type of request for  
9 modification be deemed noncontroversial in your view?

10 MR. DONOHUE: Object to the form.

11 A. Yeah. What can sometimes be controversial is  
12 if someone is, like accounting clerk 1 on the top of  
13 this table, is at a rate of \$13.89, and let's say that  
14 in the next option year or the option year after that a  
15 particular employee has now been promoted to accounting  
16 clerk 3. And so you're tracing these people from one  
17 category to another category over the course of years,  
18 or people just move into entirely different areas, from  
19 rental clerk to travel clerk for example, that can be  
20 complicated in terms of getting these changes through;  
21 but otherwise, for employees, this should be  
22 straightforward.

23 Q. Okay. So setting aside that complicated  
24 situation of individuals moving positions, when these  
25 schedules are revised and updated, if the wage rates



1 increase here, does a contractor then go back to the  
2 government and request a modification for an increase?

3 MR. DONOHUE: Object to the form.

4 A. If it's part of their contract that they can  
5 do that. And some contracts it's not a part of their  
6 contract. You bid your labor costs and that's what you  
7 bid, and there is no -- you might be able to change  
8 your labor hours through a mod, but your labor rates  
9 you don't get to change. And I have not studied this  
10 contract to see about the entitlement, if you will, or  
11 the ability to make these types of changes. But by the  
12 fact that this is showing up in the contract, it looks  
13 like it's likely the case that the contractor could, as  
14 those wage determinations came out, ask for a mod to  
15 increase, or potentially decrease, because wage rates  
16 almost always go up.

17 Q. Okay. So taking this to the next step, if GEO  
18 were required to pay detainees the minimum wage rather  
19 than \$1 a day, and a request for modification was  
20 submitted to ICE requesting an increased rate of  
21 reimbursement under CLIN 3, would that in your view be  
22 a noncontroversial request for modification?

23 MR. DONOHUE: Object to the form.

24 A. That would be if not a breach of contract,  
25 that would at least be a very controversial change,



1 very difficult change.

2 Q. And why would that be a very controversial  
3 change?

4 A. Because there are some -- well, probably many  
5 reasons. But there are requirements for employees,  
6 and -- to be an employee. There are many requirements,  
7 and detainees don't meet those requirements. And so to  
8 reclassify them somehow from detainees to employees  
9 would be huge.

10 Q. Are you -- is it your opinion in this case  
11 that detainees cannot constitute employees?

12 A. Well, I don't know if they never can. I'm  
13 just looking at my report, page 11, and it's citing to  
14 the contract. And it reads "The contractor will agree  
15 that each employee working on this contract will  
16 successfully pass the DHS employment eligibility  
17 verification (E-Verify) program operated by USCIS to  
18 establish work authorization. The contractor must  
19 agree that each employee working on this contract will  
20 have a Social Security card issued and approved by the  
21 Social Security Administration. Illegal or  
22 undocumented aliens will not be employed by the  
23 contractor or with this contract."

24 And it further goes on to talk about  
25 subcontractors. "The Contractor shall agree that each



1 person employed by the firm or any subcontractors shall  
2 have a Social Security card issued and approved by the  
3 Social Security Administration and shall be a United  
4 States citizen or a person lawfully admitted to the  
5 United States for permanent residence." And there may  
6 well be lots more, but to treat a detainee as an  
7 employee -- to treat someone as an employee who had not  
8 met all the requirements I just read would be -- if  
9 it's not breach -- well, it's not in compliance with  
10 the contract.

11 Q. Okay. So I'm asking with regard to pay  
12 consistent with Washington's minimum wage under state  
13 law. Are you offering an opinion on whether detainees  
14 are employees under state law for purposes of  
15 Washington's Minimum Wage Act?

16 A. I'm focused on the contractor who has a  
17 contract and trying to comply with their contract. So  
18 if they were to pay them that, I think they would have  
19 to reclassify them as an employee. And to reclassify  
20 them as an employee without meeting the requirements  
21 that I just read would be a breach -- I mean, not in  
22 compliance, maybe breach of the contract. But it's --  
23 so I don't see how they do that without breaching their  
24 contract.

25 Q. So why would they have to reclassify if they



1 were to pay more than \$1 per day?

2 MR. DONOHUE: Object to the form.

3 Q. Why would detainees need to be reclassified as  
4 employees if they were paid more than \$1 per day under  
5 the voluntary work program?

6 MR. DONOHUE: Object to the form.

7 A. Well, that's a little different than your  
8 previous question. Your previous question -- and maybe  
9 I'm answering a different question that you asked. But  
10 to treat them as employees, they need to determine what  
11 fringe benefits they get, and they need to meet all of  
12 the requirements that I earlier read. Now, I think  
13 you're trying to pose, I think, some kind of hierarchy  
14 where they're not treated as an employee but they're  
15 paid more or something?

16 Q. I understood you to refer a moment ago to  
17 needing to reclassify the detainees as employees if  
18 they were paid more than \$1, and I'm asking what  
19 requires them to be reclassified as employees merely  
20 because they were paid more than \$1 for participating  
21 in the voluntary program.

22 MR. DONOHUE: Object to the form.

23 A. Well, okay. So the contract indicates that  
24 they are to be paid a dollar a day. And so it would be  
25 a breach of the contract to pay them something





1 different than a dollar a day. Separately, if you -- I  
2 thought your question was -- I think your initial  
3 question was treat them as employees. And to treat  
4 someone who doesn't meet all the requirements as an  
5 employee would be in breach of the contract, I believe.

6 Q. Is that based on your interpretation of the  
7 contract?

8 MR. DONOHUE: Object to the form.

9 A. Yeah. Things like breach are -- I mean, I  
10 teach COs and CORs and company people about breach and  
11 about the changes and that sort of thing. So I have a  
12 layman's, at least, understanding of that. But as I  
13 said, I'm not here to interpret the contract and I  
14 offer no opinions in my report on interpretation of the  
15 contract.

16 Q. Okay. In this solicitation process -- we'll  
17 change tack for a moment. So in this solicitation  
18 process, are you aware of whether GEO's audited  
19 financial statements were provided to ICE as part of  
20 its proposal?

21 A. I don't know if they were provided to ICE as  
22 part of their proposal.

23 Q. Is it typical for contractors to be required  
24 to provide financial statements when submitting a  
25 proposal?



1           A. Well, often -- like I say, it's a public  
2 company, then their financial statements are publicly  
3 available, so that's that circumstance. When they are  
4 not publicly available, they sometimes are and  
5 sometimes are not.

6           Q. We discussed earlier with regard to your call  
7 with Mr. Hill, and I believe I understood you to say  
8 that your colleague took notes of that call; is that  
9 correct?

10          A. Yes.

11          Q. Do you still have those notes?

12          A. Somewhere, yes.

13          Q. Could they be provided?

14          A. Yes. I mean . . .

15          Q. Could you provide them to counsel in this  
16 case?

17                   MR. DONOHUE: We can take that up, yes.

18                   MR. POLOZOLA: Okay. I'll just state  
19 for the record that I believe that would be part of the  
20 expert's file that would be responsive to and RFP, so  
21 the witness has said that they're available. So we'll  
22 expect that they will be provided and we will certainly  
23 hold this open so that we have the opportunity to  
24 question Mr. Bingham about those notes if necessary.

25                   MR. DONOHUE: I'm not agreeing to hold



1 the deposition open. I'll agree to talk with counsel  
2 about whether or not we can provide a copy of the  
3 notes.

4 Q. [By Mr. Polozola] Is there a way to obtain  
5 those notes today so that we don't need to hold the  
6 deposition open?

7 MR. DONOHUE: If you want to go into  
8 that, then we'll go off the record and I will consult  
9 with the witness and we'll see if we can get a copy of  
10 the notes.

11 MR. POLOZOLA: Let's break momentarily  
12 so you guys can -- thank you.

13 [A brief recess was taken.]

14 [Exhibit No. 204 was marked for identification.]

15 Q. [By Mr. Polozola] So in the course of the  
16 break a document was provided to us and we made copies  
17 of the document marked as Exhibit 204. Can you tell me  
18 what this is?

19 A. It's an e-mail from my colleague Jonathan Rice  
20 to me.

21 Q. What's the subject matter of the e-mail?

22 A. It doesn't have the subject, per se. The  
23 subject is blank but -- or I can't read it, so I don't  
24 believe there is one. But it's got some notes from a  
25 conversation that he and I had with personnel from GEO,



1 Chuck Hill, Director of Business Development for GEO  
2 western division, and Lewis Carillo, VP and Corporate  
3 Counsel, in mid September.

4 Q. Okay. And I see a reference to 9-19, is that  
5 September 19?

6 A. It likely is.

7 Q. So under the 9/19 call with client, bullet  
8 point four, it says "Very rarely detainee gets assigned  
9 to two details, not typical because detail for barber  
10 shop and barber shop CU are separate details. Makes  
11 sense for security reasons to allow some detainees.  
12 This gets approved by ICE prior to any assignment.  
13 Sometimes it happens as an error but this is corrected  
14 and not allowed to continue." Do you recall that  
15 portion of the conversation with Mr. Carillo and Hill?

16 A. I recall the conversation. That particular  
17 part of the conversation, no; that's been many months  
18 ago.

19 Q. So do you recall anything further about the  
20 conversation with regard to how often detainees are  
21 assigned to multiple work details

22 A. No.

23 Q. And do you have any understanding of whether  
24 ICE reimburses GEO for the cost of paying detainees for  
25 multiple details?



1 MR. DONOHUE: Object to the form.

2 A. Not from this conversation. But from the  
3 deposition transcripts I read, I believe I understand  
4 that the multiple shifts -- at least some of the time  
5 when detainees were paid more than a dollar a day, it  
6 was with the concurrence of ICE, and they were paid.  
7 They were paid more than a dollar a day and the  
8 passthrough cost was passed through to ICE and  
9 reimbursed to GEO.

10 Q. Okay. So in the next section, second  
11 paragraph says "Client confirms that VWP is a pure  
12 passthrough cost; detainees processing, monitoring,  
13 oversight, and payment processing is covered in GEO's  
14 operational CLIN." Do you see that sentence?

15 A. I do.

16 Q. Okay. So what is the operational CLIN that's  
17 being referred to there?

18 A. I believe it's CLIN 1.

19 Q. Okay.

20 MR. POLOZOLA: I think I am done -- for  
21 myself.

22 [A brief discussion was held off the record.]  
23  
24  
25



## E X A M I N A T I O N

BY MR. FREE:

Q. So we're back on the record at 6:25.

Mr. Bingham, as I said earlier, my name is Andrew Free.

I represent a certified class of people who were

working in the voluntary work program at the Northwest

Detention Center where they were locked up. I

understand that you haven't rendered an opinion in

their case. It's called Nwauzor. You've rendered an

opinion in the State's case. But for legal reasons

that really don't concern you, the cases are now

together. And when the case gets tried, your opinion

may be offered in both. So I'm just going to ask you a

few questions. I will try to be brief. I really

appreciate you spending the time today. If you don't

understand anything that I'm asking, I know you'll tell

me. And if anything is unclear I'm happy to rephrase

it.

A. Okay.

MR. DONOHUE: And let me just put on the

record that class counsel for the Nwauzor case didn't

notice this deposition. We have had a discussion off

the record, and the spirit of cooperation and in

accordance with the judge's comments from the bench

with respect to the consolidation of these cases, I



1 have agreed to let Mr. Free depose Mr. Bingham. But I  
2 would like to say that GEO expects that there is going  
3 to be a lot of working together in the future, and we  
4 hope that we would receive the same consideration in  
5 like or similar circumstances with respect to the many  
6 depositions that still need to take place, both in the  
7 class case but the remaining State depositions.

8 MR. FREE: And while we're going to be  
9 as accommodating as we can, we are not adopting or  
10 agreeing to the statement of our off-the-record  
11 discussion. But as always, we're going to work  
12 together to make sure this case is litigated  
13 efficiently.

14 Q. Okay. Are you ready?

15 A. Yes.

16 Q. Okay. You said before that you weren't sure  
17 whether GEO had submitted historical cost information  
18 with its response to the solicitation on the 2015  
19 contract. Did I understand that correctly?

20 A. I think I said they likely did. They  
21 typically do but I have not reviewed the cost  
22 information that they submitted.

23 Q. Okay. And apart from the MDS, the private  
24 prison case that you worked on in 2002, it's my  
25 understanding you have never consulted with a private



1 prison contractor in your work in 33 years, other than  
2 GEO; is that right?

3 A. I don't think I said that. I think I said  
4 that I worked on a bid protest, and I believe I have  
5 consulted not in a dispute but with other prison  
6 contractors just in the last eight years or so. And I  
7 believe it was an indirect cost issue, allocation of  
8 indirect cost. I don't remember much about it because  
9 it was such a brief amount of work.

10 Q. Do you know how many times you consulted with  
11 other private prison contractors?

12 A. I think it was twice.

13 Q. And I believe you said, and correct me if I'm  
14 wrong, but I believe you said you had done some work  
15 for Holland and Knight five to ten times over the last  
16 ten years?

17 A. I think that's correct, yeah.

18 Q. Okay. What portion of your revenues have come  
19 from your business with Holland and Knight?

20 A. Minuscule. Less than one-tenth of one  
21 percent. I mean, I have not done a calculation of  
22 that, but it would be minuscule; it would be way less  
23 than one percent.

24 Q. And for the Kenrich Group, what portion of  
25 Kenrich Group's revenues come from consulting like this





1 as opposed to helping a contractor figure out a bid  
2 issue or talk to the government about an audit?

3 A. So I think your question is what portion of  
4 the work is dispute related -- expert witness testimony  
5 and dispute oriented. So the Kenrich Group is about 85  
6 consultants, about a hundred employees, and about 30  
7 million in annual revenues. A lot of that is in the  
8 world of construction and nuclear utilities and things  
9 of that nature that don't -- and so if you concur I  
10 will focus my answer on the 25 to 30 percent of our  
11 revenue that relates to government contract matters.

12 Q. I concur.

13 A. Okay. And so of that, what portion of that is  
14 expert witness testimony, formalized disputes, that  
15 sort of thing? I would guess -- I'm estimating about  
16 half.

17 Q. Okay. And for you personally, what portion of  
18 your book of business does that constitute,  
19 approximately?

20 A. About half.

21 Q. When was the last time you taught at GW?

22 A. Not last week but the week before.

23 Q. Is that a normal course or kind of a  
24 specialized -- is that a part of the graduate program?

25 A. Okay. So a week-and-a-half ago -- they're



1 developing a new course for attorneys on cost and  
2 pricing issues for the law school, and it's an online  
3 course where they interview -- you go into a studio and  
4 they interview you in front of cameras and that sort of  
5 thing. And that's what I did a week and a half ago.

6 So then for the course that I teach, my normal  
7 course, I've taught it ten times, and my last was,  
8 like, about three to four weeks ago was the last time  
9 that I taught that.

10 Q. How long does that course run?

11 A. So it's a semester, so it's every spring and  
12 every fall.

13 Q. All right. Who within a federal government  
14 agency is responsible for policing waste, fraud and  
15 abuse by government contractors?

16 A. Well, a number of contracting officers would  
17 say they are, that the contracting officers and the  
18 CORs and all have a role in preventing waste, fraud and  
19 abuse. The group that is -- another answer to that  
20 might be the inspectors general within each agency.

21 Q. Any reason to believe that's different for the  
22 Department of Homeland Security?

23 A. No.

24 Q. So while the contracting officers and the  
25 technical representatives had a responsibility to



1 administer the contract according to law, when people  
2 reporting or when there is independent investigation of  
3 waste, fraud and abuse in the first instance within the  
4 department, it's at the OIG; is that right?

5 A. It's hard to answer that in generalities. If  
6 someone feels, say, an employee of a contractor or of  
7 the government, feel like they have detected waste,  
8 fraud and abuse, who will they call? Sometimes they  
9 will call the contracting officer, sometimes they will  
10 call the IG, sometimes they'll call some kind of  
11 hotline that is kind of neither. So it's hard to  
12 answer that at the level of generality.

13 Q. Let's make it more specific. Do contracting  
14 officers or technical representatives have the ability  
15 to refer contractors for criminal prosecution based on  
16 violations of government contracting laws like the OIG  
17 does?

18 MR. DONOHUE: Object to the form.

19 A. I think typically the contracting officer  
20 would refer a matter for investigation to the IG.

21 Q. Okay. And similarly, are you aware of any  
22 public facing reports by contracting officers that  
23 describe waste, fraud and abuse by government  
24 contractors? Or is that the province of OIG?

25 A. That is more often the province of the OIG.



1 Q. Okay. Is it fair to say that the Department  
2 of Homeland Security's Office of Inspector General  
3 would be responsible for monitoring waste, fraud and  
4 abuse in ICE contracts?

5 A. They don't really monitor contracts. I think  
6 they get a -- if they get a referral or someone  
7 highlights something to them, then they swing into  
8 action or not. They make a determination whether it  
9 rises to the level of something they would investigate.  
10 But the monitoring part, that's the CO and the COR.

11 Q. But my question was monitoring waste, fraud  
12 and abuse in government contracts. And my  
13 understanding is the OIG does that and not the  
14 contracting officers; can we agree on that?

15 MR. DONOHUE: Object to the form.

16 A. I would not use the term "monitor" with  
17 regards to the OIG.

18 Q. What term would you use?

19 A. Investigate.

20 Q. Do they publicly report sometimes their  
21 findings of those investigations -- OIG?

22 A. The OIGs typically do, yes.

23 Q. Do you have any reason to mistrust the Office  
24 of Inspector General?

25 MR. DONOHUE: Object to the form.



1           A. You're talking about the Department of  
2 Homeland Security?

3           Q. I am.

4           A. I'll just answer that generally with respect  
5 to OIGs and auditing bodies that conduct audits like  
6 the Defense Contract Audit Agency and some others, in  
7 their reports to the public and the reports to Congress  
8 they I think sometimes want to justify their  
9 accomplishments and that they are not as neutral as  
10 some other bodies might be.

11          Q. What other body would be more neutral than OIG  
12 that you can think of?

13          A. Well, contracting officers don't publish  
14 things, but they are more neutral. But if you're  
15 asking me of bodies that publish something to the  
16 public, well, there are studies -- I mean, there are  
17 studies conducted by the congressional budget office  
18 and the general accountability office from time to  
19 time. And like the Rand study where the DOD or  
20 others -- the Office of Federal Procurement Policy  
21 commissions studies. And those, including the office,  
22 studies commissioned by the Office of Federal  
23 Procurement Policy and proclamations by the Office of  
24 Procurement Policy, I think all of those are more  
25 neutral than the OIGs tend to be.



1 Q. Okay. Do you have any personal experience  
2 reviewing DHS OIG reports regarding ICE detention?

3 A. I don't believe so.

4 Q. I'm going to ask you some questions about your  
5 report and its conclusions. So if you want to put that  
6 in front of you. At Page 15, in section D,  
7 Ramifications for Contractor Noncompliance. You state,  
8 "ICE closely monitored and inspected GEO's performance  
9 and administration of the contract. If GEO had failed  
10 to properly follow its contract requirements, ICE has a  
11 number of" -- do you see that sentence?

12 A. I do see it, yes.

13 Q. And then I understand your conclusion to be  
14 that because you have not seen these artifacts of  
15 failure, that because, as we reviewed in the notes with  
16 Chuck Hill that were in Exhibit 204, there have not  
17 been contract discrepancy reports or financial  
18 penalties or anything else like that, your assumption  
19 is GEO is compliant with the contract. Am I fairly  
20 summarizing your conclusion as to the voluntary work  
21 program?

22 MR. DONOHUE: Object to the form.

23 A. If ICE -- I would typically see if the agency  
24 was uncomfortable or unsatisfied with the contractor's  
25 performance, that you would see artifacts of that. And



1 what I've seen in the records that are highlighted in  
2 the sections that just before you read and just after,  
3 those artifacts do not indicate that ICE is  
4 dissatisfied with GEO's performance.

5 Q. And it is on that basis that you conclude, if  
6 I understand your report correctly -- this is on page  
7 4 -- "ICE had available multiple remedies and sanctions  
8 it could exercise if GEO failed to properly follow its  
9 contract requirements, including decrements to GEO's  
10 invoices, negative assessments of contract performance,  
11 cure notices, and contract termination for convenience  
12 or for default. Kenrich understands that none of these  
13 remedies or sanctions were exercised with respect to  
14 the VWP, and it therefore does not appear that GEO's  
15 performance on this contract was deficient." I left  
16 out the contract number.

17 A. You read that correctly.

18 Q. Okay. I think I understand this, but you did  
19 list some things that were not listed in the appendices  
20 today. Did you review any of the Department of  
21 Homeland Security's Office of Inspector General reports  
22 regarding ICE contracting in rendering your opinion?

23 A. I don't believe I did. I remember seeing  
24 those, but I think it was before this matter.

25 Q. What do you remember about seeing those?



1           A. I've forgotten now what the purpose was for me  
2 reviewing those IG reports or NIG reports or even doing  
3 a search at the Department of Homeland Security's OIG.  
4 But it's been some time ago, and it was before  
5 September of last year.

6           Q. Do you know approximately how long?

7           A. No.

8           Q. Do you know what OIG reports, like basically  
9 the substance of the reports that you reviewed or  
10 searched for?

11          A. No. I reviewed -- I think there's a listing,  
12 and I remember scanning through the listing and then  
13 opening a few, but it's been quite some time and I  
14 don't remember the purpose now.

15          Q. Do you know approximately how long?

16          A. I do not.

17          Q. Do you know if it was before July of 2018?

18          A. It was likely before July of 2018.

19          Q. Have you heard anything about the Department  
20 of Homeland Security's Office of Inspector General  
21 investigating contractor performance at ICE detention  
22 facilities?

23          A. I've seen something in the paper. I don't  
24 remember -- just a headline, that sort of thing.

25          Q. What do you recall seeing?





1 A. Just a headline, that sort of thing.

2 Q. Do you remember what it was?

3 A. What paper it was?

4 Q. No. What headline it was.

5 A. No.

6 Q. How do you know it was just a headline?

7 What's coming to your head that helps you remember  
8 that?

9 A. Just ICE and detention.

10 Q. Anything else you can recall as you sit here  
11 today?

12 A. No.

13 Q. Okay. Do you remember having a reaction to  
14 that article?

15 A. No.

16 Q. Did it interest you because it was sort of in  
17 your wheelhouse or did you just see it?

18 A. Just government contracts. When something  
19 like a federal government contract issue makes it to  
20 the popular press, so to speak, it kind of gets my  
21 attention.

22 Q. Do you remember what the contract issue or  
23 anything about the contract issue that was in the OIG  
24 report?

25 A. I do not.



1 Q. Are you aware of the inspector general's  
2 January 29, 2019, report, OIG 19-18?

3 A. No.

4 Q. This one could have been the headline you saw.  
5 It says "ICE does not fully use contracting tools to  
6 hold detention facility contractors accountable for  
7 failing to meet performance standards." As I've read  
8 that back to you, does that refresh any recollection  
9 about the headline you saw?

10 A. No.

11 Q. And you have no awareness of what the report  
12 says?

13 A. Correct.

14 Q. What's the likelihood that a contractor who  
15 violates the contract is going to be hit with a  
16 contract discrepancy report or a cure notice or  
17 something like that? How often do you have to violate  
18 in order to get busted?

19 MR. DONOHUE: Object to the form.

20 A. That's too vague, too general. It's hard for  
21 me to react to that.

22 Q. Okay. Well, you said because there are no  
23 reports like this about the VWP, they're compliant.

24 A. There is no evidence of noncompliance, and  
25 there would be in all the different types of remedies



1 and all the different types of audits and reports that  
2 are done. I can't say definitively, but it is likely  
3 that there would be evidence of that in all that  
4 oversight if there were problems.

5 Q. What do you base that on?

6 A. I have thirty-three years of experience. I  
7 mean, there's a lot of oversight here. There are --  
8 I'll contrast it to you're building Jeeps for the  
9 government. And all that you have to do is --

10 Q. You know what? I understand. If you want to  
11 give me this example, that's fine. But I am trying to  
12 be cognizant of the time. Do you want to contrast it  
13 to something or do you want to move on? It's okay if  
14 you want --

15 A. Yeah, I do. So you're building Jeeps and the  
16 only thing that the government has to do is test that  
17 the Jeep you deliver is compliant. Whereas, here they  
18 have to monitor everything the contractor does and they  
19 have a corp on site and they have regular meetings. So  
20 it's a lot more oversight than is often the case.

21 Q. From October 2015 to June 2018, do you have  
22 any idea how many contract discrepancy reports ICE  
23 issued?

24 A. Could you say the date range again.

25 Q. October 2015 to June 2018.



1 A. No, I don't know.

2 Q. Do you have any idea how much was deducted  
3 from government contractors during that period in terms  
4 of contract payments as penalty?

5 A. Deducted for government contractors for --

6 Q. For ICE detention.

7 A. ICE detention? No, I don't.

8 Q. Do you have any idea how many violations or  
9 deficiencies were found during that period?

10 A. For ICE detention throughout? No, I don't  
11 know.

12 Q. Do you know how many ICE facilities there are?

13 A. Three, I believe. I'm not sure.

14 Q. Do you know what the types of facilities there  
15 are for ICE? Like there are three types of contracts.  
16 Do you have any understanding of what they are?

17 A. I may have seen something about that. I don't  
18 recall.

19 Q. Okay. If detention service managers during a  
20 nearly three-year period found 14,000 deficiencies at  
21 ICE facilities, how many deficiency reports or cure  
22 notices would you expect?

23 A. I can't say. I can't react to that.

24 Q. Do you know if GEO ever had money deducted as  
25 a result of patten or practice of violations at its



1 facilities?

2 A. Of any violation not related to the voluntary  
3 work but just violation?

4 Q. Uh-huh.

5 A. I don't know.

6 Q. Assuming that the OIG is correct and 14,003  
7 deficiencies were found at ICE detention centers in a  
8 three-year period almost, and assuming further that the  
9 OIG is correct that ICE imposed financial penalties  
10 only twice, do you have any reason to revisit your  
11 conclusion that GEO is compliant with its contract  
12 because ICE has never penalized it?

13 MR. DONOHUE: Object to the form.

14 A. I would need to know more about these  
15 discrepancy reports. There are circumstances certainly  
16 in other agencies where discrepancy reports -- where  
17 there are lots of discrepancy reports and no  
18 financial -- because they're minor things. They don't  
19 rise to the level of any financial penalty.

20 Q. Would it change your conclusion if the OIG is  
21 correct when it says "Even where ICE does issue  
22 discrepancy reports, ICE does not track their use or  
23 effectiveness?"

24 MR. DONOHUE: Object to the form.

25 A. Could you repeat the question.



1 Q. The Department of Homeland Security's Office  
2 Inspector General says, "Even where ICE does issue  
3 discrepancy reports, ICE does not track their use or  
4 effectiveness." Would that give you cause to revisit  
5 your conclusions about GEO's compliance with the  
6 contract?

7 MR. DONOHUE: Object to the form.

8 A. They're saying that -- the OIG says that ICE  
9 does not track the use or effectiveness of the  
10 discrepancy reports that it issues?

11 Q. Correct.

12 A. No, that would not cause me to revisit my  
13 opinion.

14 Q. Would it change your opinion if the OIG said  
15 "No office within ICE could provide any data on how  
16 many discrepancy reports are issued to facilities and  
17 for what reasons?"

18 MR. DONOHUE: Object to the form.

19 A. You're asking would that change my opinion?

20 Q. Uh-huh.

21 A. No, it would not.

22 Q. Okay. Would it change your opinion if you  
23 learned that out of \$3 billion in total payments and  
24 14,000 violations, there were only .13 percent of  
25 financial deductions for violations?



1 MR. DONOHUE: Object to the form.

2 A. No, that would not affect my opinion.

3 Q. Is there any rate at which you would pin the  
4 typical level of violation that happens before you get  
5 dinged by a contractor within your field? Just  
6 generally, what's the violation rate?

7 MR. DONOHUE: Object to the form.

8 Q. I'm sorry. What is the violation rate on  
9 which you are basing your opinion?

10 MR. DONOHUE: Object to the form.

11 A. Without more context about these discrepancy  
12 reports, I can't offer a definitive answer. There are  
13 areas within federal contracting where reports of that  
14 nature are common and numerous, and they don't mean  
15 much. And there are other areas where they mean more  
16 and they sometimes are followed by withholding of  
17 money. But it may be a situation where one in a  
18 thousand is something significant, and 999 out of a  
19 thousand are not. So I would need more context to  
20 really answer that.

21 Q. I'm just asking about the basis of your  
22 conclusion that because there aren't these indicia of  
23 noncompliance, GEO is compliant. I'm wondering, what  
24 are you basing that on? And it seems to me that you're  
25 basing it on the assumption, correct me if I'm wrong,



1 that if a contractor violates there is going to be a  
2 record of that violation; is that true that that's your  
3 assumption?

4 MR. DONOHUE: Object to the form.

5 A. It is my experience that contractors that have  
6 the level of oversight that GEO has on this contract,  
7 that if there is some dissatisfaction with them, that  
8 you see it in the records. You see it in complaints  
9 and withholdings and poor CPAR performance reports and  
10 things of that nature, if it's significant. If it's  
11 insignificant, no, you don't see that sort of thing.

12 Q. So it's your assumption then, and you're  
13 saying it's based on your experience, that ICE's  
14 inspections and the monitoring of the detention  
15 facilities, including Northwest Detention Center, would  
16 lead to sustained compliance or systemic improvements;  
17 is that your assumption?

18 MR. DONOHUE: Object to the form.

19 A. Sustained compliance or --

20 Q. Systemic improvements. You know, something is  
21 broken, you fix it.

22 MR. DONOHUE: Same objection.

23 A. The systemic improvements, I haven't thought  
24 about whether that's true or not for this. The  
25 sustained compliance I would say materially





1 sustained -- I mean, I would not be surprised if there  
2 were knits. If there were something that the CO said,  
3 I wish you would do this differently, I wish you would  
4 do that differently, and write them up on some things.  
5 But materially compliant, yeah, I would -- based on the  
6 information we've gone through, I would be surprised if  
7 there is anything if they are not substantially  
8 compliant.

9 Q. So your understanding is the inspection and  
10 monitoring regime that you've described in your report  
11 would lead to sustained compliance in Northwest, and in  
12 fact did. Is that your understanding?

13 MR. DONOHUE: Object to the form.

14 A. I see no evidence that ICE was not satisfied  
15 with GEO's oversight of the detainee work program.

16 Q. And your presumption is that you would?

17 MR. DONOHUE: Object to the form.

18 A. If there was any significant dissatisfaction,  
19 based on my 33 years of experience, and I'm saying  
20 something significant, and it would show up in one of  
21 the eight things that I've referenced, so yeah, I think  
22 that it would.

23 Q. Okay. Maybe the OIG report that you heard of  
24 was the one in June of 2018 that was entitled "ICE's  
25 inspection and monitoring of detention facilities do



1 not lead to sustained compliance or systemic  
2 improvements." Is that the headline that you saw?

3 A. I don't remember the headline.

4 Q. Okay. ICE concurred with all five  
5 recommendations that the OIG made. But very briefly,  
6 the results of OIG's -- and this is OIG report no.  
7 18-67 -- no. 1, "Nakamoto inspections are significantly  
8 limited. And the Office of Detention Oversight  
9 inspections were not frequent enough." Were you aware  
10 of this finding by the OIG?

11 MR. DONOHUE: Object to the form.

12 Q. Would this finding, if true, undermine your  
13 conclusion about passing inspection means you're  
14 compliant?

15 MR. DONOHUE: Object to the form.

16 A. Would you reread the part prior to your  
17 question.

18 Q. Sure. And we're doing so live. I would  
19 normally like to put it in front of you, but we're  
20 working with what we've got.

21 Result 1, "Nakamoto inspections are  
22 significantly limited, and Office of Detention  
23 Oversight inspections are not frequent enough." If  
24 that's true and the OIG is not tooting its own horn, as  
25 you kind of alluded to earlier, would that call into



1 question your conclusion about the fact that there is  
2 no problem with the audit equals GEO's compliant?

3 MR. DONOHUE: Object to the form.

4 A. And that's just detention facilities  
5 throughout ICE?

6 Q. This is all ICE detention facilities.

7 A. Yeah. It doesn't -- I see so many reports  
8 where they say, Yeah, we can do better and thank you  
9 for the advice. We will do better. But still if they  
10 were not materially compliant, I think the CO and the  
11 COR would have been complaining and we would see that.

12 Q. Okay. The second conclusion is "Inadequate  
13 inspection followup leads to continuing deficiencies."  
14 Knowing that the OIG concluded this prior to preparing  
15 your report, does that call into question the fourth  
16 conclusion about GEO being compliant at Northwest?

17 MR. DONOHUE: Object to the form.

18 A. Not at that level of generality.

19 Q. Okay. What about "Onsite detention service  
20 managers face challenges in improving compliance."  
21 Would that undermine the assumptions that go into that  
22 fourth conclusion?

23 MR. DONOHUE: Object to the form.

24 A. Without knowing something more specific than  
25 that it would not.



1 Q. If the office of inspector general concluded  
2 "ICE does not consistently enforce compliance with  
3 detention standards," would that undermine your  
4 conclusion?

5 MR. DONOHUE: Object to the form.

6 A. Well, at that level of generality, no.

7 Q. Why not?

8 A. Because it's not related to this contract.

9 Nothing you've read to me that I am aware of relates  
10 only to this contract. It's just ICE detention  
11 throughout, and it's not fraud, waste and abuse. IG is  
12 always an auditor. It's always going to find an  
13 opinion of that sort of thing, that you need to  
14 track -- when you do a discrepancy report, you need to  
15 track them better. You need to systemically improve  
16 yourself better. I think -- well, they're not always,  
17 but they're often going to find that sort of thing.

18 Q. "Even well-documented deficiencies that  
19 facilities commit to fixing routinely remain  
20 uncorrected for years." Does that alter any of your  
21 conclusions?

22 MR. DONOHUE: Object to the form.

23 A. Without knowing more about the alleged  
24 deficiencies, no. I don't know if those are important  
25 or unimportant.



1 Q. "Other examples of repeat deficiencies include  
2 the facilities failing to notify ICE about alleged or  
3 proven sexual assaults." Is that an important  
4 deficiency?

5 MR. DONOHUE: Object to the form.

6 A. You ask if that's an important deficiency?  
7 And I don't know if that's an important deficiency. I  
8 don't know what impact it has on the voluntary work  
9 program.

10 Q. Okay. Do you know what a waiver is?

11 A. Generally, yes.

12 Q. Do you know how many waivers ICE gave of its  
13 detention standards this year?

14 A. No, I do not.

15 Q. Do you know how many waivers have been  
16 requested?

17 A. No.

18 Q. Do you know if GEO could ask ICE to waive the  
19 PBNDS section 5.8?

20 A. I assume that they could.

21 Q. If I told you that the Officer of Inspector  
22 General found that ICE granted 96 percent of waivers,  
23 would that alter your conclusion about the fact that  
24 GEO would necessarily need to modify or seek an  
25 equitable adjustment to pay more than a dollar?



1 MR. DONOHUE: Object to the form.

2 A. I think that GEO would need to at least modify  
3 the contract in order to pay more than a dollar.

4 Q. Why couldn't they seek a waiver?

5 MR. DONOHUE: Object to the form.

6 A. People can seek lots of things. That would be  
7 a poor contracting practice.

8 Q. Why?

9 A. Because you're trying to mod the contract. So  
10 instead of modifying the contract, you do something  
11 kind of back door or -- I would teach that to be  
12 inappropriate, not a best practice.

13 Q. So the 96 times that ICE has done that this  
14 year with respect to -- I mean, excuse me -- 180 times  
15 that ICE has done that this year, is it just globally a  
16 poor contracting practice, or is there something  
17 special about this case?

18 MR. DONOHUE: Object to the form.

19 A. And maybe I'm combining two of your sentences  
20 to draw improper conclusion, but I thought you were  
21 saying that waivers related to billing. And I think  
22 you're just talking about waivers of any kind.

23 Q. Yeah, I understand.

24 A. Waivers of any kind -- I mean, there's lots of  
25 things that I think can be waived without a contract



1 modification. Something that affects billing I think  
2 would typically -- I mean, it would be a poor practice  
3 to allow a billing change on the basis of a waiver.

4 Q. I understand. Thank you for that  
5 clarification. How many people have died at the  
6 Northwest Detention Center since the 2015 contract was  
7 entered into?

8 A. I don't know.

9 Q. Have you seen any detainee death reviews  
10 regarding those deaths?

11 A. I have not.

12 Q. Do you know how many people have died at GEO  
13 facilities since 2015?

14 A. I do not.

15 Q. Is your assumption about the compliance of GEO  
16 with its contract at Northwest based on the assumption  
17 that ICE and its monitoring personnel are appropriately  
18 staffed to do the jobs that they're budgeted for?

19 MR. DONOHUE: I was going to ask you to  
20 read it back. I just missed the question.

21 [The question was read back by the reporter.]

22 MR. DONOHUE: Object to the form.

23 A. I would say that it's based on the assumption  
24 that they are adequately staffed -- someone might say  
25 appropriately should be higher. But I think if they



1 weren't at least adequately staffed, there would be  
2 more evidence of it.

3 Q. Would the evidence include the Secretary of  
4 Homeland Security saying under oath that ICE is  
5 currently staffed for 34,000 beds and is currently  
6 detaining 52,000 people so it's 152 percent  
7 overdetention understaffing?

8 MR. DONOHUE: Object to the form.

9 A. Without something more specific than that, I  
10 can't interpret that related to this contract or even  
11 related to what does it mean staffing in that context.  
12 I mean, that could be anything. That could be people  
13 in DC at the headquarters are understaffed. Not  
14 necessarily mean that they are understaffed -- that the  
15 COR on site is understaffed. So anyway it's hard to --  
16 I can't read a lot into that statistic.

17 Q. Did you review any staffing plans for  
18 Northwest Detention Center in preparing your report?

19 A. I've seen discussions of them in the  
20 deposition transcripts and the staffing plans. I don't  
21 remember -- I don't remember seeing a staffing plan.  
22 I may have.

23 Q. Just want to understand your testimony from  
24 earlier regarding the 2015 bid, or solicitation. Is it  
25 your understanding that there were other bidders?





1           A. I think there were, but that was not so  
2 material to my opinion or to my report, so I didn't put  
3 it in. But I thought that there were.

4           Q. What did you base that on?

5           A. A vague recollection. I could be wrong.

6           Q. From what?

7           A. I don't know.

8           Q. If GEO were the sole bidder, would its  
9 negotiating position be improved or decreased based on  
10 your experience?

11          A. Its negotiating position would be improved.

12          Q. If not awarding GEO that contract would cause  
13 ICE and the federal government to incur millions of  
14 dollars in additional infrastructure costs, let's say  
15 to move the court out of the Northwest Detention Center  
16 that GEO owns, or to move ICE's enforcement and removal  
17 operations office that they have out of Tacoma, would  
18 that be a consideration that ICE would take in  
19 negotiations on the solicitation?

20                       MR. DONOHUE: Object to the form.

21          A. It would become -- that is something that ICE  
22 would have thought about, likely.

23          Q. How do you know that?

24          A. You asked would. I don't know what they  
25 thought about when they were negotiating.



1 Q. And you don't know whether GEO ever attempted  
2 to negotiate the detainee wage rate prior to the award;  
3 is that right?

4 MR. DONOHUE: Object to the form.

5 A. I saw no evidence in any of the solicitations  
6 or contracts that they attempted to negotiate a  
7 different detainee wage rate.

8 Q. Okay. Do you know if GEO has ever done that  
9 with ICE?

10 A. I don't know.

11 Q. Are you aware that GEO has admitted to paying  
12 more than a dollar to detainees regularly, not as a  
13 barber shop, but that's what they get paid at some of  
14 its other contracting facilities?

15 A. I was not aware of that.

16 Q. Would that change your conclusion that  
17 contractors do not have the discretion to pick and  
18 choose what's in the solicitation? I'll give you the  
19 specific language, but that's what I'm asking about.  
20 You concluded at page 3 of your report "In my  
21 experience, individual contractors do not have  
22 discretion to propose on some solicitation requirements  
23 while declining to propose on others."

24 MR. DONOHUE: So what's the question?

25 Q. Does the fact that GEO did it at other



1 facilities change this conclusion?

2 MR. DONOHUE: Object to the form.

3 A. Well, the sentence reads "In my experience,  
4 individual contractors do not have discretion to  
5 propose on some solicitation requirements while  
6 declining to propose on others, and can only very  
7 rarely cause the procuring agency to change the  
8 contract's requirements and specifications." So I say  
9 there only very rarely cause the procuring agency to  
10 change their specifications. I didn't say never; I  
11 just said very rarely.

12 Q. What's rare to you?

13 A. Well, it's less than one percent, especially  
14 once -- let's say in the late '90's when the Northwest  
15 Detention Center was just people within ICE, INS at the  
16 time, were trying to decide how they're going to solve  
17 their problems, et cetera. At that stage they're  
18 having discussions with industry, et cetera, they might  
19 be able to make a change like this. After you get  
20 rolling, after you have in place and you've got  
21 multiple solicitations, to make a change at that stage  
22 is very very rare.

23 Q. Why?

24 A. I can speculate as to why. I'm just telling  
25 you based on my 33 years of experience with hundreds,



1 probably thousands of these, at that stage it's very  
2 rare to see a contractor go back to the agency and say  
3 I want to change your solicitation.

4 Q. Are you aware that in 2009 GEO recorded zero  
5 dollars for the voluntary work program as being paid  
6 from ICE -- for fiscal '09? And then the next year GEO  
7 recorded something like 90,000. I'll get you the  
8 actual number. Were you aware of that?

9 A. Okay. I need to understand what you're saying  
10 a little bit better.

11 Q. Sure. In fiscal year 2009, this is document  
12 455 in the Wasser [phonetic] case, GEO received zero  
13 dollars from ICE for the voluntary work program,  
14 according to ICE. In 2010 they got 90,074.

15 A. And your question is?

16 Q. Is that the sort of situation that you're  
17 talking about?

18 MR. DONOHUE: Object to the form.

19 A. I don't know that that's accurate. If it is  
20 accurate, I don't know why. I can't say if it's true  
21 why it is true.

22 Q. And this is about the Northwest Detention  
23 facility. Do you know how many other ICE detention  
24 facilities GEO contracts with -- excuse me -- other  
25 immigration detention facilities GEO contracts with ICE



1 to operate?

2 A. No.

3 Q. Do you know at how many other facilities GEO  
4 pays more than a dollar a day?

5 A. No.

6 Q. If I told you it was at least 5 out of 15, so  
7 33 percent, that would be more rare than 1 percent,  
8 right?

9 A. More rare than one percent? Can you restate,  
10 please.

11 Q. It would not be as rare as 1 percent. I  
12 misstated the question.

13 A. 33 percent is higher than 1 percent.

14 Q. Yes. So it happens if that's true?

15 MR. DONOHUE: Object to the form.

16 A. I don't see the relevance of this without  
17 understanding their contract.

18 Q. I understand.

19 A. Or the contracts at those facilities.

20 Q. Okay. Do you know anything about the Homeland  
21 Security Advisory Counsel?

22 A. I've heard of it. I don't know anything  
23 materially about it.

24 Q. Are you aware of the report that the Homeland  
25 Security Recovery Committee did on private prison



1 contracting?

2 A. I've seen the headline but I have not read the  
3 report.

4 Q. Do you remember anything else about what that  
5 headline was?

6 A. No.

7 Q. Okay. I'm going to take two minutes and make  
8 sure I don't have anymore questions for you.

9 [A brief recess was taken.]

10 Q. [By Mr. Free] Thank you, so much. I have a  
11 couple more questions and then we will be done. So  
12 we're back on the record at 7:27. Okay. In your  
13 experience, in a typical government contracting setting  
14 if you had some labor cost built into the contract and  
15 then let's say State law changes and it requires an  
16 additional expenditure by the contractor, that's not a  
17 force majeure, right?

18 MR. DONOHUE: Object to the form.

19 A. I have not considered that.

20 Q. Okay. Typically, if there is a change in the  
21 state law that requires a contractor to incur more  
22 cost, is that something that the contractor would seek  
23 a modification on?

24 MR. DONOHUE: Object to the form.

25 A. Yeah. It's hard to answer at that level of



1   generality.  If it's immaterial, they probably would  
2   not; they probably would just eat it.  If it's  
3   significant, and I guess your question is would they  
4   and do they have rights to do that, is that the  
5   question?

6           Q.  Yeah.

7           A.  Do they have the rights do to that, that gets  
8   at is it force majeure, and that varies a lot contract  
9   by contract.  I mean, I've seen escalation where a  
10   construction contractor bids so much for steel and the  
11   price of steel goes way up, it's a fixed-price  
12   contract, they still seek reimbursement.  So I can't  
13   definitively answer your question.

14          Q.  This contract says that GEO has to comply with  
15   all applicable federal, state and local labor laws,  
16   right?

17          A.  It lists constraints that impact the contract.  
18   And under these constraints that impact the contract is  
19   comply with applicable federal, state and local laws.

20          Q.  It also says if there's a conflict in any of  
21   these terms, the most stringent standard applies.

22          A.  If you are unclear about that you need to  
23   check with the CO.

24          Q.  Do you know if GEO has ever checked with the  
25   CO on the question at issue in this case about the



1 minimum wage rate?

2 A. You're asking me do I know if they ever  
3 checked with the CO? I do not know.

4 Q. Do you know if they ever checked with folks  
5 at ICE in Washington, DC, about this question, the  
6 minimum wage rate under this contract?

7 A. I don't know if they have checked with DC.

8 Q. How many government contractors would you say  
9 you've worked for, just looking for an estimate, over  
10 your 33-year career?

11 A. Over a thousand, maybe thousands, but over a  
12 thousand.

13 Q. Of those thousand, how many could file an  
14 equitable adjustment and get a meeting with the head of  
15 the agency within a week face to face between the head  
16 of the agency and the contractor's CEO?

17 MR. DONOHUE: Object to the form.

18 A. Let me preface this with most of my -- or a  
19 significant part of mine are DOD.

20 Q. So how many of them could get in front of the  
21 commander, whatever it is -- how many of them could get  
22 in front of the head of the agency that they are  
23 contracting with within a week?

24 MR. DONOHUE: Same objection.

25 A. My point is when you have a huge 300 billion a





1 year agency, it's a lot different than what you have a  
2 billion-a-year agency.

3 Q. Do you know what the budget is for DHS?

4 A. I don't. I was talking ICE when I was saying  
5 a billion a year. I don't know what ICE's annual  
6 budget is. But DHS obviously has a lot more going on  
7 than just ICE.

8 Q. So same question. Is the answer zero? What's  
9 the answer?

10 MR. DONOHUE: Same objection.

11 A. The question just restated is how many have  
12 filed an REA and gotten a meeting with the head of the  
13 agency within a week; is that the question?

14 Q. Yeah.

15 A. I've never asked that question. I've never  
16 heard of that. So I --

17 Q. It's pretty rare, right?

18 MR. DONOHUE: Object to the form.

19 A. At that level of specificity -- well, one, I  
20 don't ask, and I don't know how many people -- meetings  
21 with the head of the agency are kind of like you're  
22 going to get that from the biggies. And for -- I don't  
23 know how GEO compared to the other contractors for DHS,  
24 maybe they classify it. But like Boeing, Lockheed  
25 Martin, Ratheon, Leidos, et cetera, et cetera, they get



1 meetings with the head of the agency regularly.

2 Q. These are people you've consulted with?

3 A. Boeing, Lockheed Martin, Ratheon -- yeah, I  
4 think, yes.

5 Q. What does that tell you about their market  
6 position, that they're able to get that meeting so  
7 quickly?

8 MR. DONOHUE: Object to the form.

9 A. Market position? What's that mean?

10 Q. I'm just restating "biggies" in a fancier way,  
11 trying to understand what you mean.

12 A. You can work on critical programs and not  
13 necessarily be big. And there are the companies that  
14 are working on critical programs that the head of the  
15 agency is very concerned with. Like right now cyber  
16 security is very big, very important. And the  
17 contracts are not necessarily very large, but the  
18 importance is there. So they likely can get meetings  
19 like that. I don't know if I answered your question.

20 Q. It's my understanding that you spoke to no one  
21 from ICE before issuing your report?

22 A. That is correct.

23 Q. Why not?

24 A. Well, I had a declaration which was, I felt --  
25 the declaration of Tae Johnson, number 7 on my appendix



1 3. And I think that was arguably better, or it was a  
2 replacement, if you will, for a conversation with  
3 someone from ICE.

4 [Exhibit No. 205 was marked for identification.]

5 Q. So after reading this declaration, you had no  
6 questions for Tae Johnson or anyone else at ICE that  
7 you wanted to follow up on before writing your report?

8 A. Your question is did I have any followup  
9 questions or did I -- could you repeat your question.

10 [The question was read back by the reporter.]

11 A. I don't remember thinking to myself, Oh, I  
12 need to talk to Mr. Johnson or I need to talk to  
13 someone at ICE. I think that answers your question.

14 Q. As you sit here today, has anything that you  
15 have learned during our colloquy caused you to question  
16 whatever is in Mr. Johnson's declaration?

17 A. Our colloquy?

18 Q. Our discussion.

19 A. It has not. I haven't reread this just now.

20 Q. That's fine. All right. Do you know how many  
21 times the GEO contract has been modified since it  
22 was -- excuse me. Do you know how many times since GEO  
23 took over performance from CSC at the Northwest  
24 Detention Center over the course of the contract  
25 history, including three contracts, do you know how



1 many times they've sought modifications?

2 MR. DONOHUE: Object to the form.

3 A. Modifications of any kind?

4 Q. Yes.

5 A. No, I don't.

6 Q. So I'm assuming you don't know how many times  
7 they have ever been denied modifications?

8 MR. DONOHUE: Same objection.

9 A. Same answer.

10 Q. What is the highest profit margin that you  
11 have ever seen in a government contract that you worked  
12 on?

13 A. Approximately 70 percent.

14 Q. What kind of contract was that?

15 A. That was transportation services in  
16 Afghanistan.

17 Q. What about domestically, non DOD?

18 A. It's hard to sort through. There are so many.  
19 Well, okay. I can't parse my memory non DOD versus  
20 DOD, but I will say, like, 45 I've seen domestically.

21 Q. Do you remember what type of contract it was?

22 A. That particular one -- and I've seen a few in  
23 the high 30s and 40s. The one I was thinking about  
24 first was for hardware. It was non services.

25 Q. What's the highest that you can remember



1 seeing in a services contract?

2 MR. DONOHUE: Object to the form.

3 A. Well, okay. I've seen quite high, in the 70  
4 percent range, again, for services. It's just that  
5 you -- and you didn't -- in contingency operations  
6 where you are operating in a difficult part of the  
7 world, it's hard to estimate. And you do something on  
8 a fixed-price basis, it's hard to estimate how bad it  
9 could get. So contractors bid a high fixed price  
10 because otherwise it could go very badly. And if they  
11 get -- and if then things, you know, roll of the dice,  
12 luck, whatever, things don't go that badly, they make a  
13 lot of profit and they're also incentivized for even  
14 taking on work like that.

15 Q. Does GEO's contract fall within that type of  
16 contract you're thinking about when you describe that?

17 MR. DONOHUE: Object to the form.

18 A. It's not like the form, but it's very hard to  
19 manage -- my impression is it's very hard to manage a  
20 contract like GEO's contract for the Northwest  
21 Detention Center. So there is a fair amount of risk,  
22 and profit should follow risk; in other words, high  
23 risk -- if you're going to sign up to a risky contract,  
24 you should get a high profit rate.

25 Q. What's a high profit rate?



1 MR. DONOHUE: Object to the form.

2 A. It varies depending on the circumstance. I  
3 have a hard time just saying what is high without some  
4 parameters around it.

5 Q. For a fixed-price contract in a services  
6 environment, non-foreign services, what's a good day at  
7 the office for one of your clients in terms of profit  
8 rate?

9 MR. DONOHUE: Object to the form.

10 A. Well, I will say that you tend to do better on  
11 mods than on the base contract -- sometimes there are  
12 situations, so a higher profit rate on mods on a base  
13 contract, and then where you have a lot of risk -- you  
14 know, in the twenties.

15 Q. In the twenties. Okay. All right. So what's  
16 the profit that GEO has actually realized at Northwest  
17 during the course of the contract?

18 A. I don't know.

19 Q. Do you know if it's ten percent or more or  
20 less?

21 MR. DONOHUE: Object to the form.

22 A. I've already answered that. I don't know.

23 Q. Okay. Thank you. Is there anything now as  
24 you sit here about any of the answers you have given so  
25 far that you want to change or modify or correct or



1 amend?

2 A. Nothing comes to mind.

3 Q. Okay. You'll have an opportunity to do that,  
4 I think, once we get the transcript. Is there anything  
5 as you sit here right now that you think you should  
6 have looked at before creating your report that you  
7 didn't?

8 MR. DONOHUE: Object to the form.

9 A. It's hard for me to parse through -- well,  
10 like, Ryan Kimble's 30(b)(6). I wish I had read that  
11 before -- would have been nice to have read that before  
12 my report. I wasn't aware of it.

13 MR. DONOHUE: It didn't exist -- or  
14 maybe it did. I apologize. I'm not sure the  
15 transcript existed.

16 MR. FREE: Who's testifying here?

17 MR. DONOHUE: Well, we've gone so long,  
18 we might as well switch out witnesses.

19 Q. [By Mr. Free] All right.

20 A. So your opinion question is, is there anything  
21 do I think I should have looked at? Is that what your  
22 question was?

23 MR. FREE: Could you read back my  
24 question.

25 [The question was read back by the reporter.]



1           A. Well, I'm curious certainly about those IG  
2 reports, but I didn't hear anything in what you read  
3 that was specific enough or that causes me much concern  
4 about. But should I have read that before my report,  
5 not sure. As far as anything else, no, nothing comes  
6 to mind.

7           Q. If you had known that GEO pays more than a  
8 dollar a day and gets reimbursed by ICE for a dollar at  
9 no fewer than five of its other facilities, prior to  
10 writing your report would you have wanted to look at  
11 those contracts?

12                       MR. DONOHUE: Object to the form.

13           A. I'm certainly curious about the circumstances  
14 and what their contract looks like and how they  
15 square -- if their contract reads like these contracts,  
16 how they square that. So I'm curious about that.

17           Q. Okay. Thank you. Those are all the questions  
18 that I have for you.

19                       MR. FREE: Thank you, very much, for  
20 being so accommodating. I'm sorry you missed your  
21 call. I'm sorry you missed your flight. Sorry you  
22 missed your dinner. Thank you, very much.

23                                       [Deposition concluded at 7:48 p.m.]

24   [Signature reserved.]

25





GREG BINGHAM



## 1 REPORTER'S CERTIFICATE

2  
3 I, CATHERINE A. DECKER, the undersigned Certified  
4 Court Reporter, pursuant to RCW 5.28.010 authorized to  
5 administer oaths and affirmations in and for the state  
6 of Washington, do hereby certify that the sworn  
7 testimony and/or proceedings, a transcript of which is  
8 attached, was given before me at the time and place  
9 stated therein; that any and/or all witness(es) were by  
10 me duly sworn to tell the truth; that the sworn  
11 testimony and/or proceedings were by me  
12 stenographically recorded and transcribed under my  
13 supervision, to the best of my ability; that the  
14 foregoing transcript contains a full, true, and  
15 accurate record of all the sworn testimony and/or  
16 proceedings given and occurring at the time and place  
17 stated in the transcript; that a review of which was  
18 requested; that I am in no way related to any party to  
19 the matter, nor to any counsel, nor do I have any  
20 financial interest in the event of the cause.

21 WITNESS MY HAND this 10th day of June 2019.

22 *Catherine A. Decker*  
23

24 CATHERINE A. DECKER,  
25 Washington State Certified Court Reporter, #1975  
cdecker@yomreporting.com

